NOV 10 1981

965-H-12 J29.10:C73/979/supp.

U.S. Department of Justice
Bureau of Justice Statistics

COMPLETED

Privacy and Security of Criminal History Information

COMPENDIUM OF STATE LEGISLATION

1979 SUPPLEMENT

MICROFILMED FROM BEST AVAILABLE COPY

U. S. Department of Justice
Bureau of Justice Statistics

Benjamin H. Renshaw
Acting Director
Bureau of Justice Statistics

Carol G. Kaplan
Director, Federal Statistics
and Information Policy Division

Report of work performed under LEAA Grant No. 79-SS-AX-001, awarded to SEARCH Group, Inc. 1620 - 35th Avenue, Sacramento, California 95822. Contents of this document do not necessarily reflect the view or policies of the Bureau of Justice Statistics or the U.S Department of Justice.

Privacy and Security of Criminal History Information

COMPENDIUM OF STATE LEGISLATION

Bureau of Justice Statistics • U. S. Department of Justice

This report was prepared by

Gary R. Cooper, Assistant Director
SEARCH Group, Inc.

Ronald J. Nolfi, Program Coordinator
SEARCH Group, Inc.

Ronald J. Cassells, Research Analyst
SEARCH Group, Inc.

and

Nancy R. Mills, System Specialist
SEARCH Group, Inc.

BJS authorizes any person to reproduce, publish, translate, or otherwise use all or any part of the copyrighted material in this publication, with the exception of those items indicating that they are copyrighted by or reprinted by permission of any source other than the SEARCH Group, Inc.

Copyright 1979 by the SEARCH Group, Inc.

For sale by the Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

Stock Number 027-000-00871-2 $10.00

B

PREFACE

This supplemental edition represents the latest in a series of published compilations of state laws and administrative regulations governing the collection, storage, and dissemination of criminal history record information.

In 1975, the Office of General Counsel of the Law Enforcement Assistance Administration (LEAA) published the initial collection of available state privacy legislation, entitled, "Compendium of State Laws Governing The Privacy And Security of Criminal Justice Information."

During 1978, a second edition was published by LEAA's National Criminal Justice Information and Statistics Service. Entitled, "Privacy And Security of Criminal History Information, Compendium of State Legislation", this edition was considered a current reflection of state laws as of January 1978.

The present volume is an update and refinement of these previous efforts. The legislative research was conducted through June 1979, and any enactments of privacy bills by the states up to that date are included in this edition.

This 1979 edition does not repeat the state laws and administrative regulations found in either the 1975 or 1978 editions. Rather, the intent of the present volume is to provide the reader with any changes in state laws having occurred between January 1978 to June 1979. In addition, the current volume contains: (1) laws enacted prior to 1978 omitted from previous editions; and (2) a more comprehensive collection of state administrative regulations.

The format and classification categories used herein are consistant and compatible with the 1978 edition to aid research requiring the use of both documents. Slight changes were made, however, and these changes as well as recommendations on how best to use the supplement are discussed in the Introduction.

BLANK PAGE

TABLE OF CONTENTS

Page

PREFACE i

INTRODUCTION. vii

CLASSIFICATION CATEGORIES ix

CRIMINAL JUSTICE INFORMATION POLICY DEVELOPMENT: TABULATED STATE SUMMARIES

- SUMMARY OF STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY 1

1. State Regulatory Authority 3
2. Privacy and Security Council 4
3. Regulation of Dissemination 5
4. Right to Inspect 6
5. Right to Challenge 7
6. Judicial Review of Challenged Information . . . 8
7. Purging: Non-conviction Information 9
8. Purging: Conviction Information 10
9. Sealing: Non-Conviction Information 11
10. Sealing: Conviction Information 12
11. Removal of Disqualifications 13
12. Right to State Non-Existence of a Record . . . 14
13. Research Access 15
14. Accuracy and Completeness 16
15. Dedication 17
16. Civil Remedies 18
17. Criminal Penalties 19
18. Public Records 20
19. Separation of Files 21
20. Regulation of Intelligence Collection 22
21. Regulation of Intelligence Dissemination . . . 23
22. Security 24
23. Transaction Logs. 25
24. Training of Employees 26
25. Listing of Information Systems 27

TABLE OF CONTENTS (cont.)

Page

26. Freedom of Information, (Including Criminal Justice Information) 28

27. Freedom of Information, (Excluding Criminal Justice Information) 29

- SURVEY COMPARISON OF CHANGES IN STATE STATUTES/ REGULATIONS BY CLASSIFICATION CATEGORY . . . 31
- SUMMARY FINDINGS OF STATE STATUTES/REGULATIONS IN THE 1979 SUPPLEMENT 34

STATE STATUTES/REGULATIONS

Alabama 39
Alaska 59
Arizona 61
Arkansas 73
California 77
Colorado 81
Connecticut 91
Delaware 99
District of Columbia 107
Florida 109
Georgia 137
Hawaii 145
Idaho 169
Illinois 175
Indiana 185
Iowa 187
Kansas 189
Kentucky 207
Louisiana 209
Maine 237
Maryland 275

TABLE OF CONTENTS (cont.)

	Page
Massachusetts	307
Michigan	309
Minnesota	311
Mississippi	349
Missouri	351
Montana	353
Nebraska	377
Nevada	405
New Hampshire	413
New Jersey	415
New Mexico	417
New York	421
North Carolina	423
North Dakota	429
Ohio	431
Oklahoma	433
Oregon	435
Pennsylvania	451
Puerto Rico	467
Rhode Island	469
South Carolina	471
South Dakota	473
Tennessee	483
Texas	485
Utah	495
Vermont	509
Virgin Islands	511
Virginia	513
Washington	537
West Virginia	541
Wisconsin	543
Wyoming	545

BLANK PAGE

INTRODUCTION

Privacy continues to be a major concern of the American public. The recent advances in computer technology and the increasing collection and exchange of personal records have been matched by a growing concern over the policies and principles which should govern their uses. This concern is particularly evident with respect to criminal justice information. During the first half of 1979, for example, there were more criminal justice privacy bills introduced in state legislatures than any other form of privacy legislation.

This compilation of state privacy and security laws and administrative regulations is intended as a reference document for those working in the area of criminal justice information law and policy. It may be useful to legislators, legal analysts, researchers, planners, administrators and others in developing information policy or implementing effective and fair information practices. Hopefully, by contrast and comparison of the various approaches reflected in different state laws, a compilation of this type may contribute to the evolution of enlightened privacy policy.

Scope of the 1979 Supplement

This supplemental edition contains privacy laws enacted by state legislatures from January 1978 through June 1979. During this period, 15 states enacted comprehensive or amending statutes governing the use of criminal justice information. In some cases, several states have enacted more than one piece of legislation. In total, there were 21 bills enacted for the 18 month period which this survey covers.

This edition also adds the administrative regulations developed pursuant to the controlling statute. In this regard, the regulations of 18 states are included. Most of these regulations were in existence prior to 1978. For recently enacted laws, the administrative regulations of some states had not yet been issued. And, for some states, a set of regulations appeared to be nonexistent. Generally, the collection of this information was more difficult to acquire.

A third group of information to be found in the present edition is the pre-1978 privacy laws which were not included in the 1978 edition. These existing laws were added to lend more completeness and accuracy to a comprehensive catalog of state criminal justice privacy laws.

The survey methodology used to compile the present collection included library research and extensive contact with both the legislative information offices and state record repositories of many states. Once the laws were collected, each state's Attorney General was sent a copy of his state's laws and regulations and requested to attest to their completeness and accuracy. Responses served to correct any omissions or inaccuracies in the initial survey.

How To Use the 1979 Supplement

The present volume is intended as a supplement to the 1978 edition. When taken together, the collection represents a comprehensive account of criminal justice privacy laws and regulations in the states. Therefore, to review the text of all statutes and regulations controlling privacy policies for most states it will be necessary to consult both the 1978 and 1979 editions. Changes in format have been kept to a minimum to insure compatibility of use between the two.

The substantive content of this edition has been divided into two major sections. First, graphic representations depict developments in criminal justice information law and policy (pp. 1-36). Second, the full text of state statutes

and regulations comprising the 1979 Supplement is included.

The first set of tables (pp. 1-29) lists citations to state statutes and regulations by classification categories. Twenty seven categories defined in the following section have been used to classify areas which state laws and regulations address. The table depicting the category "State Regulatory Authority" for example, indicates whether a particular state has such a provision and, if so, provides its legal citation to facilitate referencing the text in either this or the 1978 Compendium. The reader is able to quickly identify the concentration of states addressing a particular policy area.

Another view of state privacy trends is reflected in the Survey Comparison of Changes in State Statutes/Regulations by Classification Category (p. 33). The survey results have been updated by the addition of 1979 data. At a glance, the table indicates the degree of attention that a particular area of privacy policy is receiving in the states. The table retains the classification categories presented in previous Compendiums for continuity of data analysis.

Finally, a summary table characterizing the activities of the states during 1978-1979 is presented (pp. 34-36). Its purpose is to portray in graphic form the level of state activity in privacy policy development since January 1978. Also, judging by the numbers or pieces of legislation and regulations enacted, this table indicates which areas of privacy policy received the most attention.

The entries within the columns indicate the number of statutes and regulations enacted by a state within a classification category. The numeral '1' indicates that a state adopted a new policy during 1978-79, by either a single statute or regulation. Where numbers greater than '1' appear, the policy changes have been a result of multiple statutes, regulations, of a combination thereof. The summary columns at the far right of each page and at the bottom of the final page of the chart (p. 36) are useful indicators of individual state and summary trends during the past two years.

In the full text section of the Compendium, (pp. 37-545) an individual chart for each state has been developed to assist the user in differentiating between statutes or regulations in the 1978 and the 1979 supplemental edition. Within this section, states are listed alphabetically and the chart is found as the first page preceding the text of any state's statutes or regulations. The columns in the charts entitled "1978 Compendium" and "1979 Supplement" are marked for this purpose. It should be noted that a chart is included for all states. For some states however, there will be no following statutory or regulatory text. The reason is that some states have not enacted legislation since the 1978 Compendium or research has not detected any additions since that time.

CLASSIFICATION CATEGORIES

The following is a list of categories into which state laws and regulations have been classified for both the individual and summary state tables. The summary state tables are found on pages 1-36.

To assist the user, the classification categories have been retained from the 1978 edition.

1. State Regulatory Authority.
A grant of power to a state agency to promulgate statewide security and privacy regulations for criminal justice information systems.

2. Privacy and Security Council.
A state board, committee, commission, or council whose primary statutory function is monitoring, evaluating, or supervising the confidentiality and security of criminal justice information.

3. Regulation Of Dissemination.
Restrictions on dissemination of criminal history information.

4. Right To Inspect.
The right of an individual to examine his criminal history records.

5. Right To Challenge.
The right to an administrative proceeding in which an individual may contest the accuracy or completeness of information pertaining to him.

6. Judicial Review Of Challenged Information.
The right of an individual to appeal an adverse agency decision concerning challenged information to a state court.

7. Purging: Non-Conviction Information.
The destruction or return to the individual of criminal justice information where no conviction has resulted from the event triggering the collection of the information.

8. Purging: Conviction Information.
The destruction or return to an invidual of criminal history information indicating a conviction.

9. Sealing: Non-Conviction Information.
The removal of criminal history information from active files where no conviction has resulted from the event triggering the collection of information.

10. Sealing: Conviction Information.
The removal from active files of individual criminal history information indicating a conviction.

11. Removal Of Disqualifications.
The restoration of rights and privileges such as public employment to persons who have had criminal history records purged or sealed.

12. Right To State Non-Existence Of A Record.
The right to indicate in response to public or private inquiries the absence of criminal history in cases of arrest not leading to conviction or where an arrest or conviction record has been purged.

13. Research Access.
The provision for and regulation of access to criminal justice information by outside researchers.

14. Accuracy And Completeness.
A requirement that agencies institute procedures to insure reasonably complete and accurate criminal history information, including the setting of deadlines for the reporting of prosecutorial and court dispositions.

15. Dedication.
The requirement that computer configurations be assigned exclusively to the criminal justice function.

16. Civil Remedies.
Statutory actions for damages or other relief resulting from violations of various privacy and security laws.

17. Criminal Penalties.
Criminal sanctions for a violation of various privacy and security laws.

18. Public Records.
Requirements that certain criminal history records maintained by the police or courts be open to the public.

19. Separation Of Files.
Requirements that criminal history information be stored separate from investigative and intelligence information.

20. Regulation Of Intelligence Collection.
Restrictions on the kind of intelligence information which may be collected and retained and/or prohibition on its storage in computerized systems.

21. Regulation Of Intelligence Dissemination.
Restrictions on dissemination of intelligence information.

22. Security.
Requirements that criminal justice agencies institute procedures to protect their information systems from unauthorized disclosure, sabotage, and accidents.

23. Transaction Logs.
Records which must be maintained by criminal justice agencies indicating when and to whom criminal justice information is disseminated.

24. Training Of Employees.
Security and privacy instruction which must be provided to employees handling criminal justice information.

25. Listing Of Information Systems.
A mandatory disclosure of the existence of all criminal justice information systems describing the information contained in such systems.

26. Freedom of Information, (Including Criminal Justice Information).
Provisions for public access to government records that apply to criminal justice records.

27. Freedom Of Information, (Excluding Criminal Justice Information).
Provisions for public access to government records from which criminal justice records are specifically exlcuded.

CRIMINAL JUSTICE INFORMATION POLICY DEVELOPMENT: TABULATED STATE SUMMARIES

SUMMARY OF STATE STATUTES/REGULATIONS

BY CLASSIFICATION CATEGORY

The Summary of State Statutes/Regulations by Classification Category table, (pages 3-29) contains a detailed matrix summarizing state statutes and regulations through June, 1979. For easy reference, each classification category has been organized alphabetically by state, and the matrix references are keyed to section numbers of the specific state code.

To locate the text of the legislative citations, the individual state statutes/regulations chart, preceding each state's collection of laws should be consulted. This effort will lead the researcher to the appropriate edition of the Compendium which contains the pertinent state legislation.

BLANK PAGE

1. State Regulatory Authority

AL	41-9-591; 41-9-594
AK	12.62.010
AZ	41-2203(3); 41-1750
AR	5-1101; 5-1103
CA	11027; 13800; 13820; 13830
CO	24-32-401
CT	
DE	11-8501
DC	
FL	20.201; 943.05; 943.06
GA	SB439, 92A-3002, 92A-3003, 92A-3005
HI	28-52; HB282(15)
ID	19-5201; 19-4812
IL	38-206-1; 38-209-3; 127-55(a)
IN	4-23-4-1; 4-23-4-4; 10-1-2.5-1
IA	749.1
KS	HB2562
KY	15A.040
LA	15-575; 15-1201
ME	25-1541; 198-1669

MD	27-744; HB1378
MA	6-168
MI	28.211
MN	15.1641
MS	E.O. 201
MO	E.O.
MT	82A-1207; SB271-9(7); SB271-23
NB	LB713-29
NV	216.185; AB524-16
NH	
NJ	E.O.
NM	4-25-8
NY	Ex Law 835
NC	143B-338
ND	
OH	
OK	74-8.1
OR	E.O. 75-23; 181.555
PA	HB2095(601); E.O. 1975-10
PR	

RI	
SC	73-20
SD	
TN	38-1001; E.O. 9
TX	
UT	77-59-3
VT	20-2051
VI	
VA	9-107.1; 9-109; 9-111.3,4
WA	314-9
WV	
WI	165.84(b)
WY	9-136.19; 22.31

SUMMARY OF STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

2. Privacy and Security Council

AL	41-9-594
AK	
AZ	
AR	
CA	
CO	
CT	
DE	
DC	
FL	943.08
GA	92A-3005
HI	
ID	
IL	38-209-6.15
IN	
IA	749B.19
KS	SB406, 118-2
KY	
LA	
ME	

MD	
MA	6-170
MI	
MN	15.169
MS	
MO	
MT	
NB	LB713-29
NV	
NH	
NJ	E.O.
NM	
NY	
NC	
ND	
OH	
OK	
OR	E.O. 75-23,(10,11)
PA	
PR	

RI	
SC	
SD	
TN	
TX	
UT	
VT	E.O. 31
VI	
VA	9-109
WA	
WV	
WI	
WY	

SUMMARY OF STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

3. Regulation of Dissemination

AL	41-9-621; 41-9-622; 41-9-642; Reg. 003
AK	12.62.030, Reg. 6AAC 60.070
AZ	13-1273; 41-1750; Reg. 13-1-01; 13-1-05; 13-1-06
AR	42-401; 42-410
CA	11076; 11105; 13300; Ch. 1, Title 11, Sec. 703
CO	24-72-305
CT	78-200(11,12,13); 4-191; 29-16; 54-90
DE	11-4322; 11.518; 29-10004
DC	
FL	943.08
GA	SB439, 92A-3003, Reg. 140-2.01
HI	28-45; 28-55; 831.31; HB282(9); HB282(10)
ID	19-4812
IL	38-206-7; 38-1003-5-1
IN	10-1-2.5-3; 5-2-4-6
IA	749A-4; 749B.2; 749B.3
KS	22-3711; SB406; 118-5; 118-6; 118-7; Reg.
KY	17.150
LA	15.574.12; 15.577; 15.581.10; Reg. 17-3:6
ME	16-603; 16-604; 25-1631; Reg.
MD	27-740; 27-749; Reg. Title 12,.11
MA	6-172; 276-100; Reg. 2.11, 2.17; 1.15-1.20
MI	15.243; 28.251
MN	15.1641; 364.04; Reg. III, V
MS	
MO	Reg. 2.1.3; 5.2.1
MT	82-417; SB271-10; 11;12;21
NB	LB713; 29.3518; 29.3523; Reg. 3,7
NV	AB524-9 to 14
NH	106-B:14; Reg. 3; SOP(c)
NJ	2A:85-18; 53:6-18
NM	41-25-8; 41-24-3; Reg. 75-6
NY	Corr Law 21
NC	15-201
ND	12-60-15
OH	149.43; 5122.53; 2953.32
OK	68-205; 22-385; 74-118.17; 74-150.5
OR	137.007; E.O. 75-23; Reg. 257-10-020 025
PA	HB2095(301); 61.13
PR	
RI	
SC	23-3-140; 73-23
SD	23-5-7; 23-6-14, Reg. 2:02:03:06
TN	
TX	
UT	63-50-7, Reg.
VT	28-204, 28-601
VI	
VA	9-111.6,7; 19.2-389;S.542; 319.2-389;S.750, 319.2-389; Reg. 4.0
WA	314-4; Reg. 365-50-290 to 365-50-550; Reg. 162-12-140
WV	
WI	165.83(j)
WY	

SUMMARY OF STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

4. Right to Inspect

AL	41-9-621; 41-9-643
AK	12.62.030; Reg. 6AAC, 60.080(5)
AZ	41-1750(9)
AR	5-1102; 16-802; Reg. 3
CA	11105(8); 11122; Ch. 1, Title 11 Sec. 705
CO	24-72-303; 24-72-304
CT	78-200(10); 4-193
DE	11-4322; 11-8511; 29-10004; Reg. 1.4
DC	
FL	943.08; Reg. 11C-8
GA	92A-3003; 92A-3006; Reg. 140-2.10
HI	HB282(14); 92-51; Reg. 2
ID	H82(o)
IL	Reg. 3,4,5
IN	4-1-6-3
IA	749A.4; 749B.5; 749B.8
KS	21-4605; 21-4616; 21-4617 SB406, 118-6, 118-9; Reg.
KY	17.150; 61.880; 61.884
LA	Reg. 17-3:3
ME	16-606

MD	27-747; 27-751; 76A-3; Reg. Title 12, .05
MA	6-175; 66A-2; Reg. 3-1-3.7
MI	15.233
MN	15.165; Reg. VI
MS	
MO	549.151; Reg. 6.1.1
MT	SB271-19
NB	LB713; 29.3522; 29.3525; Reg. 4
NV	179.295; AB524-15
NH	Reg. 3; B-9
NJ	
NM	Reg. 75-6
NY	Crim Proc 160.40; 160.50; Pub Off Law .89
NC	Reg. .0808
ND	
OH	2953.32
OK	22-982
OR	137.079; 181.555; E.O. 75-23; Reg. 257-10-035
PA	HB2095(601); E.O. 1975-10
PR	

RI	
SC	73-24
SD	23-6-11; Reg. 2:02:03:01
TN	Reg.
TX	
UT	63-50-7; 78-26-2; Reg.
VT	1-318
VI	
VA	9-111.11; Reg. 5.0
WA	314-8; Reg. 365-50-070
WV	
WI	
WY	9-692.3

SUMMARY OF STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

5. Right to Challenge

AL	41-9-645
AK	12.62.030; Reg. 6AAC, 60.080(5)
AZ	
AR	5-1102; 16-802, Reg. 4,5
CA	11126
CO	24-72-307
CT	78-200(7); 4-193
DE	Reg. 1.5
DC	
FL	943.08; Reg. 11C-8
GA	92A-3006; Reg. 140-1.06
HI	HB282(14); Reg. 2,3,4
ID	
IL	Reg. 5
IN	4-1-6-5
IA	749B.5; 749B.8
KS	HB2562; SB406,118-6; Reg.
KY	
LA	Reg. 17-3:4
ME	16-606

MD	27-747; 27-752; Reg. Title 12, .07
MA	6-175; 66A-2; Reg. 3.8-3.12
MI	
MN	15.165; Reg. VI
MS	
MO	Reg. 6.2.1, 6.2.2
MT	SB271-20
NB	LB713, 29.3526; Reg. 1,7
NV	AB524-15
NH	Reg. 3C
NJ	
NM	
NY	
NC	Reg. .0808
ND	
OH	
OK	22-982
OR	181.555; E.O. 75-23; Reg. 257-10-035
PA	HB2095(601); E.O. 1975-10
PR	

RI	
SC	73-24
SD	Reg. 2:02:03:02
TN	Reg.
TX	
UT	63-50-7; Reg.
VT	1-318
VI	
VA	9-111.11; Reg. 6.0-11.0
WA	314-8; Reg. 365-50-210
WV	
WI	
WY	9-692.3

SUMMARY OF STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

6. Judicial Review of Challenged Information

AL	41-9-645
AK	12.62.030
AZ	
AR	
CA	11126
CO	24-72-307
CT	4-194; 4-195
DE	
DC	
FL	
GA	92A-3006
HI	
ID	
IL	
IN	
IA	749B.5
KS	
KY	17.150
LA	Reg. 17-3:4
ME	16-606

MD	27-753; Reg. Title 12, .06
MA	6-176
MI	
MN	15.165; 15.0425
MS	
MO	Reg. 6.2.1, 6.2.2
MT	
NB	LB713, 29.3526; Reg. 1
NV	
NH	
NJ	
NM	
NY	
NC	
ND	
OH	
OK	
OR	137.079; Reg. 257-10-035, 050
PA	HB2095(602)
PR	

RI	
SC	
SD	Reg. 2:02:03:02
TN	
TX	
UT	63-50-7; Reg.
VT	1-318
VI	
VA	9-111.11
WA	
WV	
WI	
WY	9-692.3

SUMMARY OF STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

7. Purging: Non-Conviction Information

AL	41-9-625
AK	12.62.040; Reg. 6AAC, 60.100
AZ	
AR	
CA	Reg.
CO	
CT	78-200(5); 29-15; 54-90
DE	11-3904
DC	
FL	
GA	
HI	831.32; SB393
ID	19-4813
IL	38-206-5; 127-55(a)
IN	35-4-8-1
IA	749B.16; 749B.17
KS	
KY	
LA	15-58-8; 44-9
ME	

MD	
MA	Reg. 1.21(b)
MI	28.243; 780.223
MN	
MS	
MO	610.100
MT	80-2005
NB	
NV	
NH	Reg. 3D
NJ	
NM	
NY	Crim Proc 160.50
NC	90-96
ND	
OH	190.60
OK	74-150.7
OR	
PA	HB2095(302)
PR	

RI	12-1-12
SC	17-1-40
SD	
TN	
TX	SB374(55)
UT	77-35-17.5
VT	
VI	
VA	9-111.9
WA	314-6
WV	15-2-24(H)
WI	
WY	

SUMMARY OF STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

8. Purging: Conviction Information

AL	
AK	12.62.040
AZ	
AR	5-1109
CA	Reg.
CO	
CT	54-90
DE	
DC	
FL	943.08
GA	
HI	
ID	
IL	
IN	
IA	
KS	
KY	
LA	15-581-8
ME	

MD	
MA	Reg. 1.21(b)
MI	
MN	364.04
MS	
MO	
MT	
NB	
NV	AB524-13
NH	Reg. 3D
NJ	
NM	
NY	
NC	90-96
ND	
OH	
OK	74-150.7
OR	
PA	
PR	24-2404; 34-1731

RI	12-1-13
SC	
SD	
TN	40-4001
TX	
UT	77-35-17.5
VT	
VI	
VA	9-111.9
WA	314-6
WV	15-2-24(H)
WI	
WY	

SUMMARY OF STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

9. Sealing: Non-Conviction Information

AL	
AK	Reg. 6AAC, 60.100
AZ	
AR	
CA	851.8
CO	HB1070, 24-72-308; SB184, 24-72-308
CT	54-90
DE	
DC	
FL	901.33
GA	
HI	831.32; SB393(1)
ID	
IL	
IN	
IA	
KS	
KY	
LA	44-9
ME	

MD	27-292; 27-736; 27-737
MA	276-100C; Reg. 1.7-1.8, 1.21(a)
MI	335.347
MN	299C.11
MS	
MO	610.100
MT	
NB	
NV	179.255; 179.275
NH	
NJ	2A:85-15
NM	
NY	Crim Proc 160.50
NC	
ND	
OH	
OK	
OR	
PA	
PR	

RI	
SC	
SD	
TN	
TX	
UT	
VT	
VI	
VA	9-111.9; 19.2-392.2
WA	
WV	
WI	
WY	

SUMMARY OF STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

10. Sealing: Conviction Information

AL	
AK	Reg. 6AAC, 60.100
AZ	13-1761; 13-1744
AR	43-1231
CA	
CO	24-72-305; HB1070, 24-72-308; SB184, 24-72-308
CT	
DE	
DC	
FL	893.14
GA	
HI	712-1256
ID	
IL	
IN	
IA	
KS	21-4616; 60-2702(a)
KY	
LA	
ME	15-2161A

MD	27-292
MA	94C-34; 276-100A
MI	
MN	364.04
MS	
MO	
MT	
NB	
NV	179.245; 179.275; 453.336
NH	651:5
NJ	2A:164-28; 2A:169-11; 24:21-28
NM	
NY	Crim Proc 170.56; Corr Law 752
NC	
ND	
OH	2951.04; 2953.32
OK	11-794; 22-991C; 63-2-410
OR	137.225
PA	
PR	24-2404

RI	
SC	
SD	39-17-114
TN	
TX	
UT	
VT	
VI	
VA	9-111.9
WA	
WV	
WI	
WY	

11. Removal of Disqualifications

AL	
AK	
AZ	13-1742; 13-1743; 13-1744
AR	43-1231; 43-1233
CA	
CO	24-72-308
CT	
DE	
DC	
FL	893.14; 901.33
GA	
HI	712-1255; 831-3
ID	
IL	
IN	
IA	
KS	21-4616; 21-4617; 22-3722
KY	
LA	44-9
ME	15-2161A

MD	27-292
MA	276-100A; 276-100C
MI	335.347
MN	364.03
MS	
MO	
MT	
NB	
NV	
NH	651:5
NJ	2A:164-28; 2A:169-11; 24:21-27
NM	41-24-1
NY	Crim Proc 160.60
NC	
ND	
OH	2953.33
OK	
OR	137.275; 137.260
PA	HB2095(304)
PR	24-2404

RI	12-1-13
SC	
SD	39-17-114
TN	
TX	
UT	
VT	
VI	
VA	
WA	
WV	
WI	
WY	

SUMMARY OF STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

12. Right to State Non-Existence of a Record

AL	
AK	
AZ	
AR	
CA	432.7 Labor Code
CO	
CT	54-90
DE	11-3904
DC	
FL	893.14; 901.33
GA	
HI	712-1256; 831.32
ID	
IL	
IN	
IA	
KS	21-4617
KY	
LA	
ME	

MD	27-292; 27-740
MA	94C-34; 276-100A; 276-100C
MI	
MN	
MS	
MO	610.100
MT	
NB	
NV	
NH	651:5
NJ	2A:85-22; 24:21-28
NM	
NY	Crim Proc 160.60
NC	90-96
ND	
OH	2953.33
OK	
OR	137.225
PA	
PR	

RI	
SC	
SD	
TN	
TX	SB374(55.03)
UT	77-35-17.5
VT	
VI	
VA	
WA	
WV	
WI	
WY	

SUMMARY OF STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

13. Research Access

AL	
AK	12.62.030(c); Reg. 6AAC 60.090
AZ	
AR	
CA	11105; 11144; 13202; 13205
CO	
CT	78-200(11)
DE	
DC	
FL	
GA	
HI	HB282(9)
ID	
IL	
IN	
IA	749B.4
KS	
KY	
LA	15-574.12; 15-580
ME	16-603

MD	27-745; 43B-22
MA	6-173
MI	
MN	15.1641
MS	
MO	
MT	
NB	
NV	
NH	
NJ	
NM	
NY	
NC	114-10.1
ND	
OH	
OK	
OR	E.O. 75-23, (3,6)
PA	
PR	

RI	
SC	
SD	
TN	
TX	
UT	
VT	
VI	
VA	19.2-389
WA	314-4(5); 314-5(6); Reg. 365-50-310
WV	
WI	
WY	

SUMMARY OF STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

14. Accuracy and Completeness

AL	41-9-622; 41-9-634; 41-9-648
AK	
AZ	Reg. 13-1-02
AR	5-1107; 5-1112; 16-802
CA	11105.5; 11112;.13127; 13150
CO	24-32-412
CT	78-200(8)
DE	11-8503
DC	4-134
FL	943.05; 943.08; 947.14; Reg. 11C-4
GA	27-220; 92A-302; 92A-2501; 92A-3004; Reg. 140-2.13
HI	28-53; 28-56; HB282(5); Reg. 4
ID	19-4812; 19-4813
IL	38-206-2; 38-206-2.1; 38-206-5
IN	4-1-6-2; 4-1-6-5; 5-2-4-4; 10-1-1-5; 10-1-1-18
IA	749.4; 749B.5; 749B.12; 749B.15
KS	75-5218; 50-712; 21-2501; HB2562
KY	17.110; 17.147; 17.150
LA	15-578; 15-581.2
ME	15-2161A; 16-606; 25-1542; 25-1547

MD	27-736; 27-747; 27-752
MA	6-171; 6-175; 66A-2; 127-73
MI	28.243; 28.255; 28.261
MN	299C.10; 15.1641
MS	
MO	57.103; 57.105; Reg. 2.3.2
MT	80-2005; SB271-6,9
NB	LB713, 29.3517; Reg. 1
NV	216.235; 216.290
NH	106B:14
NJ	53:1-13
NM	39-3-8
NY	Crim Proc 160.20; Corr Law 211; Ex Law, 837-6
NC	149.74
ND	12-60-11; 12-60-16
OH	109.57
OK	74-150.10
OR	181.511; 181.521; E.O. 75-23; Reg. 257-10-020
PA	HB2095(502,701); 19.1403; 61.16
PR	24-2518

RI	12-1-10
SC	23-1-90; 23-3-40; 73-22; 73-30
SD	23-5-4; 23-5-8; Reg. 2:02:02:01
TN	38-503
TX	
UT	63-50-6; Reg.
VT	
VI	
VA	9-111.10
WA	
WV	
WI	165.83(2,F)
WY	

SUMMARY OF STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

15. Dedication

AL	
AK	12.62.040
AZ	
AR	
CA	
CO	
CT	
DE	
DC	
FL	
GA	92A-3003
HI	
ID	19-5202
IL	
IN	
IA	
KS	
KY	
LA	
ME	

MD	
MA	
MI	
MN	
MS	
MO	
MT	
NB	
NV	
NH	
NJ	
NM	
NY	
NC	
ND	
OH	
OK	
OR	
PA	
PR	

RI	
SC	
SD	
TN	
TX	
UT	
VT	
VI	
VA	
WA	
WV	
WI	
WY	

SUMMARY OF STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

16. Civil Remedies

AL	
AK	12.62.060
AZ	39-121.02; 41-1750
AR	16-808
CA	
CO	30-10-101; 24-72-305
CT	4-197
DE	29-10005
DC	
FL	
GA	92A-3007
HI	
ID	
IL	
IN	
IA	749B.6
KS	
KY	61.882
LA	Reg. 17-3:1
ME	25-1550

MD	HB1326(4)(5)
MA	6-127
MI	
MN	15.166
MS	25-53-59
MO	Reg. 1.4.3
MT	
NB	
NV	
NH	
NJ	
NM	
NY	Corr Law 755
NC	132-5.1
ND	
OH	149.99; 1343.10
OK	
OR	192.490
PA	HB2095(903)
PR	

RI	12-1-12
SC	
SD	
TN	
TX	
UT	63-50-8
VT	
VI	
VA	9-111.12
WA	314-11
WV	
WI	
WY	

SUMMARY OF STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

17. Criminal Penalties

AL	36-12-42; 41-9-600
AK	
AZ	13-1761
AR	5-1110; 5-1111; 16-808; 43-1235
CA	6251; 11141; 13302
CO	24-72-309
CT	1-21(K); 29-17
DE	11-8520; 11-8521
DC	
FL	119.10
GA	92A-9939
HI	28-46; HB282(16)
ID	
IL	38-206-7
IN	5-2-4-7; 35-4-8-4
IA	749B.5; 749B.7; 749B.9
KS	SB406,118-7
KY	17.157
LA	15-581; 15-581.21; 44-37
ME	15-2161A; 16-605

MD	27-739; 27-754; 43B-22; 76A-5; HB1326(5)
MA	6-128
MI	750.492; 28.246
MN	15.167; 16.169
MS	
MO	109.180; 601.115
MT	
NB	LB713, 29.3528; Reg. 3
NV	AB524-18
NH	106B:14; 651:5
NJ	
NM	71-5-3; 4-25-8
NY	
NC	132-3
ND	
OH	149.43; 1347.99; 2953.35
OK	21-461; 21-531; 74-118.17
OR	162.305
PA	HB2095(902); 19.1406
PR	

RI	23-1-90; 31-1-140
SC	23-1-90; 31-1-140
SD	25-4-3; 23-6-18
TN	15-306; 40-4004
TX	SB374(55.04)
UT	63-50-9
VT	
VI	
VA	19.2-392.3; 9-111.13
WA	314-12
WV	
WI	
WY	

SUMMARY OF STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

18. Public Records

AL	36-12-40
AK	
AZ	39-121.01
AR	16-801
CA	6251
CO	24-72-201; 24-72-303
CT	1-15; 1-19; 1-21(j)
DE	29-10001
DC	4-135
FL	119.01
GA	27-220; 40-2701
HI	571-84; 92-9; 92-50
ID	9-301
IL	116-43.4
IN	4-1-6-1; 5-14-1-2
IA	749B.18
KS	45-201
KY	61.870
LA	44-1
ME	1-401

MD	76A-1
MA	66-10; 66A-1
MI	750.491; 15.231
MN	15.17
MS	25-41-11
MO	109.180; 109.190
MT	
NB	84-712; LB713, 29.3520
NV	293-010; 293.030
NH	7A:1; 7A:4; 91A:4
NJ	Reg. 1:38
NM	75-5-1
NY	Pub Off Law .87
NC	132-1
ND	21-04-18
OH	1340.01
OK	6-208; 51-24; 63-301
OR	192.001
PA	65.66.1
PR	

RI	
SC	30-1-10; 30-3-20
SD	1-27-1
TN	15-304; 15-401
TX	
UT	63-50-10
VT	
VI	3-881
VA	
WA	
WV	
WI	
WY	

19. Separation of Files

AL	
AK	Reg. 6AAC, 60.030
AZ	
AR	
CA	13102
CO	30-10-101
CT	
DE	
DC	
FL	943.08
GA	Reg. 140-2.02
HI	
ID	
IL	
IN	5-2-4-2
IA	749B.8; 749B.9
KS	
KY	
LA	Reg. 17-3:9
ME	

MD	
MA	6-167
MI	
MN	
MS	
MO	
MT	
NB	
NV	
NH	
NJ	
NM	
NY	
NC	
ND	
OH	
OK	
OR	
PA	
PR	

RI	
SC	73-21
SD	
TN	
TX	
UT	
VT	
VI	
VA	
WA	
WV	
WI	
WY	

SUMMARY OF STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

20. Regulation of Intelligence Collection

AL	41-9-639
AK	12.62.010; 12.62.015
AZ	
AR	5-1102
CA	13102
CO	
CT	
DE	
DC	
FL	943.08; SB1316
GA	92A-3005
HI	
ID	
IL	
IN	5-2-4-3
IA	
KS	
KY	
LA	
ME	
MD	
MA	
MI	
MN	
MS	
MO	
MT	
NB	
NV	
NH	Reg. 3
NJ	
NM	
NY	
NC	
ND	
OH	
OK	
OR	E.O. 75-23
PA	
PR	
RI	
SC	
SD	
TN	
TX	
UT	
VT	1954; 1955
VI	
VA	
WA	
WV	
WI	
WY	

SUMMARY OF STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

21. Regulation of Intelligence Dissemination

AL	41-9-641
AK	12.62.030(e); 12.62.010
AZ	41-1750
AR	Reg. 2
CA	
CO	24-72-305
CT	1-19
DE	
DC	
FL	943.08; SB1316
GA	Reg. 140-2.02
HI	92-5; 92-6; 92-51; Reg. 5
ID	
IL	
IN	5-2-4-6
IA	749B.3; 749B.8; 749B.19
KS	21-4617
KY	17.150
LA	44-3
ME	16-604; 16-606

MD	76A-3; HB1326(3)
MA	
MI	15.243
MN	15.162; HB738, 20(3)
MS	
MO	
MT	
NB	Reg. 7
NV	
NH	
NJ	
NM	
NY	Pub Off Law .87
NC	
ND	
OH	
OK	
OR	192.500
PA	65.66.1
PR	

RI	
SC	
SD	
TN	15-305
TX	
UT	
VT	1954; 1955
VI	
VA	
WA	
WV	
WI	
WY	9-136.27

22. Security

AL	41-9-594; 41-9-621(9); Reg. 004,005
AK	12.62.040; 12.62.050; Reg. 6AAC, 60.030, 60.040
AZ	
AR	5-1103
CA	11077; Ch. 1, Title 11, Sec. 706, 707
CO	
CT	78-200(6); 4-193
DE	
DC	
FL	943.08
GA	92A-3003; Reg. 140-2.02
HI	HB282(7)
ID	
IL	
IN	4-1-6-2
IA	749B.10; 749B.12; 749B.14
KS	HB2562
KY	
LA	15-577; Reg. 17-3:8
ME	16-603
MD	27-747; Reg. Title 12, .12
MA	6-171; 6-174; 66A-2; Reg. 3.13-3.14
MI	
MN	15.1641
MS	25-53-5
MO	E.O.; Reg. 5.1.1, 5.3.1
MT	SB271-14 to 18
NB	LB713, 29.3518, 29.3519; Reg. 3
NV	AB524-16
NH	Reg. 1
NJ	
NM	4-25-7
NY	Ex. Law 837
NC	
ND	
OH	1347.05
OK	74-118.17
OR	E.O. 75-23; Reg. 257-10-020
PA	HB2095(401); E.O. 1975-10
PR	
RI	
SC	73-21; 73-23
SD	
TN	
TX	
UT	63-50-6
VT	
VI	
VA	9-111.10; Reg. 14.0-14.6
WA	
WV	
WI	
WY	

SUMMARY OF STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

23. Transaction Logs

AL	41-9-640
AK	12.62.030; Reg. 6AAC, 60.070
AZ	
AR	Reg. 6,7
CA	11078; 11105.5
CO	
CT	4-193
DE	Reg. 1.5
DC	
FL	
GA	92A-3003; Reg. 140-2.02
HI	HB282(14)
ID	
IL	
IN	4-1-6-2
IA	749B.2; 749B.3
KS	Reg.
KY	
LA	Reg. 17-3:6
ME	16-607

MD	27-752
MA	6-172
MI	
MN	Reg. VI
MS	
MO	Reg. 2.3.2
MT	SB-271-20
NB	LB 713, 29-3526
NV	
NH	Reg. 2
NJ	
NM	
NY	
NC	Reg. .0808
ND	
OH	
OK	
OR	Reg. 257-10-035
PA	HB2095, (602)
PR	

RI	
SC	73-22
SD	Reg. 2:02:03:04
TN	
TX	
UT	
VT	
VI	
VA	9-111.11; Reg. 11
WA	Reg. 365-50-250
WV	
WI	
WY	

SUMMARY OF STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

24. Training of Employees

AL	
AK	12.62.030(d)
AZ	
AR	5-1112
CA	11077; Reg. 710
CO	
CT	78-200(6)
DE	
DC	
FL	943.09
GA	92A-3003; Reg. 142-2.09
HI	HB282(7)
ID	
IL	
IN	4-1-6-2
IA	749B.11
KS	
KY	15.330; 15A.070
LA	Reg. 17-3:10
ME	
MD	88B-6
MA	66A-2
MI	
MN	
MS	
MO	
MT	80-2006; 82-421; SB271-18(3)
NB	Reg. 3
NV	
NH	
NJ	
NM	39-3-9
NY	
NC	17A-1; 17B-1
ND	109.71
OH	
OK	74-150.2
OR	
PA	
PR	
RI	
SC	23-23-10
SD	
TN	38-1101
TX	
UT	
VT	
VI	
VA	Reg. 14.4
WA	
WV	
WI	
WY	9-136.24

SUMMARY OF STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

25. Listing of Information Systems

AL	
AK	
AZ	
AR	16-804
CA	
CO	24-30-606; 24-30-607
CT	
DE	
DC	
FL	
GA	
HI	
ID	
IL	
IN	4-1-6-7
IA	
KS	
KY	
LA	
ME	

MD	
MA	
MI	
MN	15.163
MS	
MO	
MT	
NB	
NV	
NH	7-A:2
NJ	
NM	
NY	
NC	
ND	
OH	1347.03
OK	74-118.13
OR	
PA	
PR	

RI	
SC	
SD	
TN	
TX	
UT	63-50-5
VT	
VI	
VA	
WA	
WV	
WI	
WY	

SUMMARY OF STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

26. F.O.I., (Including Criminal Justice Information)

AL	
AK	
AZ	
AR	16-801
CA	
CO	24-72-301; 24-72-303
CT	4-193
DE	
DC	
FL	
GA	40-2701
HI	92-50
ID	
IL	
IN	4-1-6-1
IA	
KS	50-712
KY	61-878
LA	
ME	1-401; 16-602

MD	76A-1
MA	66A-1
MI	15.231
MN	
MS	
MO	
MT	
NB	
NV	
NH	
NJ	
NM	
NY	
NC	
ND	
OH	
OK	
OR	192.500
PA	
PR	

RI	
SC	
SD	1-27-1
TN	
TX	
UT	63-50
VT	1-317
VI	3-881(g)
VA	H 1427, 2.1-342; 211-342
WA	
WV	
WI	
WY	

SUMMARY OF STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

27. F.O.I., (Excluding Criminal Justice Information)

AL	
AK	
AZ	39-121.01
AR	
CA	6254
CO	24-72-202
CT	
DE	29-10002
DC	
FL	
GA	
HI	
ID	
IL	
IN	
IA	749B.18
KS	
KY	61-878
LA	44-3
ME	

MD	
MA	
MI	
MN	15.1641
MS	25-41-3
MO	
MT	
NB	
NV	
NH	106-B:14; 91-A:5
NJ	
NM	71-5-1
NY	
NC	
ND	
OH	1347.04; 149.43
OK	
OR	181.540; 192.500
PA	
PR	

RI	
SC	
SD	
TN	
TX	3, (3), 8
UT	
VT	1-317; 28-601
VI	
VA	211-342; 2.1-384
WA	314-13
WV	29B-1-4
WI	
WY	9-692.3

SUMMARY OF STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

SURVEY COMPARISON OF CHANGES IN STATE STATUTES/REGULATIONS BY CLASSIFICATION CATEGORY

The Survey Comparison of Changes in State Statutes/Regulations by Classification Category table, (page 33) sets forth comparative results of legislative survey findings for the years 1974, 1977 and 1979. Categorical classification of recent legislative activity may then be contrasted and compared with previous survey findings. The reader should note, however, that each survey year is cumulatively included in the results of the succeeding survey, with the sum of the legislative activity reflected in the current survey year.

SUMMARY FINDINGS OF STATE STATUTES/REGULATIONS IN THE 1979 SUPPLEMENT

The Summary Findings of State Statutes/Regulations in the 1979 Supplement table, (pp. 34-36) portrays in graphic form the approximate level of state activity in privacy policy development as reflected in the 1979 Supplement. In addition, this table indicates which areas of privacy policy received the most attention, by reflecting the numbers or pieces of legislation and regulations enacted. The entries within each column represent the number of statutes and regulations enacted by a state within a classification category. The summary columns at the far right of each page and at the bottom of the table's final page are useful indicators of individual state and summary trends during the past two years.

BLANK PAGE

SURVEY COMPARISON OF CHANGES IN STATE STATUTES/REGULATIONS BY CLASSIFICATION CATGEGORY

ITEM	1974	1977	1979
1. State Regulatory Authority	7	38	42
2. Privacy and Security Council	2	10	13
3. Regulation of Dissemination	24	40	44
4. Right to Inspect	12	40	43
5. Right to Challenge	10	30	36
6. Judicial Review of Challenged Information	10	20	22
7. Purging Non-Conviction Information	20	23	28
8. Purging Conviction Information	7	13	19
9. Sealing Non-Conviction Information	8	15	16
10. Sealing Conviction Information	7	20	21
11. Removal of Disqualifications	6	22	22
12. Right to State Non-Existence of a Record	6	13	17
13. Reseacher Access	6	12	14

ITEM	1974	1977	1979
14. Accuracy and Completeness	14	41	45
15. Dedication	2	3	3
16. Civil Remedies	6	22	25
17. Criminal Penalties	18	35	39
18. Public Records	9	43	42
19. Separation of Files	5	10	10
20. Regulation of Intelligence Collection	3	10	10
21. Regulation of Intelligence Dissemination	7	24	25
22. Security	12	26	31
23. Transaction Logs	6	11	27
24. Training of Employees	4	18	23
25. Listing of Information Systems	1	8	8
26. F.O.I. Including CJ	**	**	18
27. F.O.I. Excluding CJ	**	**	19

*The figures presented are cumulative and may include statutes or regulations previously enacted but excluded from prior surveys.

**DATA UNAVAILABLE FOR THESE YEARS.

Cat. / State	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	Total
AL			1																			1						2
AK																												Ø
AZ	1		1											1														3
AR			2																									2
CA												1										1		1				3
CO									2	2																		4
CT			1	1	1		1						1	1								1		1				8
DE				1	1																		1					3
DC																												Ø
FL				1																1	1							3
GA	1		1																									2
HI	1		1	1	1		1						1	1			1					1	1	1				12
ID				1																								1
IL				1	1																							2
IN																												Ø
IA																												Ø
KS	1	1	2	2	3									1								1						11
KY																												Ø

SUMMARY FINDINGS OF STATE STATUTES/REGULATIONS
IN THE 1979 SUPPLEMENT

Cat. / State	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	Total
LA			1		1	1													1			1	1	1				7
ME			1																									1
MD	1		1	1	1											1	1				1	1						8
MA																												Ø
MI																												Ø
MN			1	1	1																1		1					5
MS																												Ø
MO																												Ø
MT	1		1	1	1		1							1								1	1	1				9
NB	1	1	2	1	2	2								2			2	1				2	2	1				19
NV	1		1	1	1			1									1					1						7
NH																												Ø
NJ																												Ø
NM			1	1																								2
NY																												Ø
NC				1	1		1	1				1											1					6
ND																												Ø
OH																												Ø

SUMMARY FINDINGS OF STATE STATUTES/REGULATIONS
IN THE 1979 SUPPLEMENT

Cat. / State	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	Total
OK																												ø
OR			1	1	1	1								1								1	1					7
PA	1		1	1	1	1	1				1			1		1	1					1	1					12
PR																												ø
RI																												ø
SC																												ø
SD			1	1	1	1								1									1					6
TN																												ø
TX							1					1					1											3
UT			1	1	1	1								1														5
VT																												ø
VI																												ø
VA			3	1	1				1					1			1					1	1	1		1		12
WA																												ø
WV																												ø
WI																												ø
WY																												ø
Total	9	2	25	20	20	7	6	2	4	2	1	3	2	12	0	2	8	1	1	1	3	14	12	7	0	1	0	165 / 165

SUMMARY FINDINGS OF STATE STATUTES/REGULATIONS
IN THE 1979 SUPPLEMENT

STATE

STATUTES / REGULATIONS

This section of the Supplement sets forth the actual text of the state laws and implementing agency regulations which are cited and classified in the previous tables as well as in the individual state charts preceding the text of each states' laws.

It is the purpose of this collection to make available to the researcher the variety of approaches and alternatives taken by the states in regard to their criminal history information practices. However, the reader is reminded and cautioned that this effort is current through June 1979, and thus further review of a particular state's legislation, to include the most recent legislative changes and enactments, may be appropriate.

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	41-9-594 41-9-591	X X	
2. Privacy and Security	41-9-594	X	
3. Dissemination Regulations	41-9-621,622 41-9-642 Reg. 003	X X	X
4. Inspection	41-9-621 41-9-643	X X	
5. Challenge	41-9-645	X	
6. Judicial Review	41-9-645	X	
7. Purge: Non-Conviction	41-9-625	X	
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete	41-9-622 41-9-634 41-9-648	X X X	
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty	36-12-42 41-9-600	X X	
18. Public Records	36-12-40	X	
19. Separate Files			
20. Intelligence Collection	41-9-639	X	
21. Intelligence Dissemination	41-9-641	X	
22. Security	41-9-621(9) 41-9-594 Reg. 004,005	X X	X
23. Transaction Logs	41-9-640	X	
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ			

-39-

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

A-agaaa

BLANK PAGE

ALABAMA

Privacy & Security Regulation
No. 001

State of Alabama
Criminal Justice Information Center
858 South Court Street
Montgomery, Alabama 36130

ADMINISTRATIVE PROCEDURES

Purpose: This regulation sets forth the procedures for issuing new or revised privacy and security regulations and the procedure for appealing existing regulations.

1. Authority. ACJIC privacy and security regulations are issued by the ACJIC Commission through the authority of Section 5, Alabama Act No. 872, Regular Session 1975.

2. Procedure for Modification of Regulations.

A. Recommended changes, additions, or deletions to ACJIC privacy and security regulations should be directed to the Director, ACJIC, 858 South Court Street, Montgomery, Alabama 36130.

B. Proposed changes, additions, or deletions will be presented to the Privacy and Security Committee for review. Committee recommendations will be forwarded to the ACJIC Commission for approval/disapproval.

C. Proposed changes, additions, or deletions that are disapproved will be returned to the originator with appropriate comments as to the reason(s) for disapproval.

3. Appeal Procedures. The process of appeal by an individual or governmental body of any rule or regulation promulgated by the Commission shall first be to the Commission proper. The appellant may present his argument at a regular meeting of the Commission requesting the alteration or suggesting the nonapplicability of a particular rule and/or

regulation. If the appellant is not satisfied by the action of the Commission, then an appeal may be made to the circuit court of Montgomery County.

This regulation has been reviewed and approved by the ACJIC Commission.

Attest:

R. W. Blaylock, Director
Alabama Criminal Justice Information Center

ALABAMA

Privacy & Security Regulation
No. 002

State of Alabama
Criminal Justice Information Center
858 South Court Street
Montgomery, Alabama 36130

DEFINITIONS

Purpose: This regulation defines terms used in ACJIC privacy and security regulations.

1. The term "criminal justice agencies" means only those public agencies, or subunits thereof, at all levels of government which perform as their principal function activities (1) relating to the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of criminal offenders; or (2) relating to the collection, storage, and dissemination of criminal justice records.

2. The terms "criminal history record information," "criminal history information," or "criminal histories" mean information compiled by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and any disposition arising therefrom, sentencing, correctional supervision and release. It shall be understood not to include intelligence, analytical and investigative reports and files, nor statistical records and reports in which individuals are not identified and from which their identities are not ascertainable.

3. The terms "Act" or "ACJIC Act" mean Alabama Act No. 872, Regular Session, 1975.

4. The term "Commission" means Alabama Criminal Justice Information Center Commission.

5. The term "ACJIC" means Alabama Criminal Justice Information Center.

6. The term "NCIC" means the National Crime Information Center operated by the Federal Bureau of Investigation.

7. The term "CCH/OBTS system" means computerized criminal history/offender-based transaction statistics system. CCH records an offender's formal contacts with each segment of the criminal justice system. OBTS is a statistical system which describes the aggregate experiences of an offender in terms of type, relation and time-frame of the criminal justice process.

8. The term "LEDS" refers to the Law Enforcement Data System operated by the ACJIC. LEDS contains computerized files consisting of wanted persons, stolen vehicles, stolen property and firearms, vehicle and boat registration, and drivers license information.

9. The term "direct access" means access or the right to access by an agency or individual to criminal justice records maintained by the ACJIC without the intervention of another and independent agency or individual.

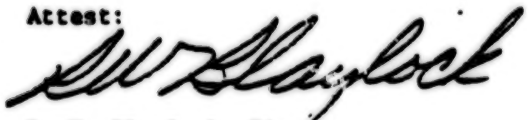
10. The term "indirect access" means access to criminal justice information through an agency or individual authorized direct access to criminal justice records maintained by the ACJIC.

11. The term "administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It also includes criminal identification activities and the collection, storage and dissemination of criminal history record information.

12. The term "record of adjudication of guilt" means an arrest record with a court disposition noting a conviction of the offense charged.

This regulation has been reviewed and approved by the ACJIC Commission.

Attest:



R. W. Blaylock, Director
Alabama Criminal Justice Information Center

ALABAMA

Privacy & Security Regulation
No. 003

State of Alabama
Criminal Justice Information Center
858 South Court Street
Montgomery, Alabama 36130

CRIMINAL HISTORY DISSEMINATION POLICIES & PROCEDURES

Purpose: This regulation defines criminal history information usage and dissemination for information collected, stored, processed, or disseminated by the ACJIC.

1. Agencies authorized access to criminal history record information:

A. Criminal Justice Agencies

Criminal justice agencies, upon completion of a Privacy and Security Agreement as specified in paragraph 2 of this regulation, shall be authorized direct access to criminal history record information for the following purposes:

(1) Functions related to the administration of criminal justice.

(2) Criminal justice agency pre-employment screening.

Criminal history record information may be disseminated directly to Federal agencies and agencies of other states only if they are criminal justice agencies within the meaning of these regulations.

B. Noncriminal Justice Agencies

The following types of noncriminal justice agencies may be authorized indirect access to criminal history record information upon approval by the appropriate authority and completion of a Privacy and Security Agreement:

(1) Agencies authorized by State or Federal statute, executive order, local ordinance, or court order to have access to criminal history information shall be granted indirect access to such information. Dissemination

will be through the ACJIC or designated criminal justice agencies. Application for access to criminal history information under this paragraph shall be addressed to the Director, ACJIC.

(2) Agencies or individuals may be authorized access to criminal history record information for the express purpose of research, evaluative or statistical activities pursuant to a specific agreement with the ACJIC and with the approval of the ACJIC Director. Individuals or agencies seeking access under this paragraph shall submit to the ACJIC a completed research design that assures tha security and confidentiality of the data. Dissemination of criminal records pursuant to this paragraph will be through the ACJIC.

(3) Businesses or private persons may be allowed access to records of adjudication of guilt for the purpose of making employment and job assignment decisions about employees or prospective employees whose duties involve or may involve:

(a) Providing services necessary to maintain the public safety of the State's citizens;

(b) Working in or near private dwellings without immediate supervision;

(c) Custody or control over access to cash or valuable items;

(d) Knowledge of or access to secret processes, trade secrets or other confidential business information; and,

(e) Insuring the security or safety of other employees, customers, or property of the employer.

Criminal records disseminated for use in employement and job assignment decisions must be based on positive identification of the subject by fingerprint comparison. The use of the information shall be limited to the purposes for which it was released. Dissemination will be through the ACJIC.

Application for records under this Section shall be in writing to the Director, ACJIC. Fees shall be charged for disseminating such records which will raise an amount of revenue which approximates, as nearly as practicable, the direct and indirect costs to the State providing the information.

(5) Agencies or individuals not otherwise authorized access to criminal history record information collected, stored, processed, or disseminated by the ACJIC, may be authorized indirect access to such information upon a demonstrated need and right to access and utilize such records. Application for access under this paragraph shall be in writing to the ACJIC Director. Upon request by the applicant or upon the ACJIC's own motion, the Privacy and Security Committee shall conduct public hearings at which it may receive evidence and hear statemants concerning the application for access to criminal history record information. Access to information under this paragraph will be through the ACJIC or designated criminal justice agencies.

2. Privacy and Security Agreements. Each agency or individual authorized access to criminal history record information, whether directly or through any intermediary, shall enter into a Privacy and Security Agreement with the ACJIC.

A. Criminal justice agencies shall agree to the following:

(1) To receive, store, use, and disseminate criminal history record information in strict compliance with State and Federal statutes and regulations governing criminal history record information.

(2) To make its records available to the ACJIC for the purpose of conducting periodic audits to determine compliance with statutes and regulations governing criminal history record information.

(3) To keep such records as the ACJIC may require to facilitate such audits.

B. Noncriminal justice agencies shall agree to the following:

(1) To receive, store, and use criminal history record information in strict compliance with State and Federal statutes and regulations governing criminal history record information.

(2) To restrict the use of criminal history record information to the purposes for which it was provided and disseminate it no further.

(3) To keep such records as the ACJIC may require and to make those records available for audit to determine compliance with appropriate statutes and regulations.

(4) To familiarize personnel working with or having access to criminal history record information with the appropriate statutes and regulations governing such information.

3. General Policies on the Use and Dissemination of Criminal History Record Information.

A. Criminal history records obtained from the National Crime Information Center (NCIC) through the ACJIC are subject to the policies promulgated by the NCIC Advisory Policy Board.

MICROFILMED FROM BEST AVAILABLE COPY

B. No agency or individual having access to criminal history record information maintained by the ACJIC, whether directly or through any intermediary, shall confirm the existence or nonexistence of such information to any person or agency that would not be eligible to receive the information itself.

This regulation has been reviewed and approved by the ACJIC Commission.

Attest:

R. W. Blaylock, Director
Alabama Criminal Justice Information Center

Privacy & Security Regulation
No. 004

State of Alabama
Criminal Justice Information Center
858 South Court Street
Montgomery, Alabama 36130

PERSONNEL SECURITY

Purpose: This regulation establishes procedures by which personnel security is achieved and maintained. The procedures include employment screening, management control, in-service training, penalties, and system discipline.

1. Employment Screening. Applicants for employment and those presently employed by the Alabama Criminal Justice Information Center or Commission whose duties require access to criminal justice information or to areas where such information is stored, must consent to an investigation of their character, previous employment, and other matters necessary to establish their suitability to work with sensitive information. Giving false information will disqualify an applicant from employment and subject a present employee to dismissal. The investigation will be designed to develop sufficient information to enable ACJIC officials to determine employability and fitness of persons entering sensitive positions.

Employees of other State government departments and employees of nongovernmental agencies providing contractual services, whose duties require access to criminal justice information or areas where such information is stored, shall be subject to pre-employment screening.

Remote terminal operators and employees of local/regional criminal justice information systems exchanging criminal justice information with the ACJIC are also subject to personnel security screening. This responsibility rests with the appropriate criminal justice agency.

ACJIC personnel records, including employment suitability and security investigations, are confidential and will be made available only to ACJIC officials who require access to such information in the performance of their official duties.

2. Management Control.

A. Personnel employed by the Data Systems Management Division (DSMD) Alabama Department of Finance, who provide data processing services to the ACJIC for the operation of the criminal justice information system, shall be subject to the management control of the ACJIC Director in the areas specified in this regulation.

The ACJIC Director shall execute a privacy and security agreement with the DSMD which shall include the following conditions:

(1) Those personnel whose assigned duties involve the collection, storage, processing, or dissemination of criminal history record information shall be under the supervision of the ACJIC Director, or his designee, while performing those duties. The ACJIC Director shall have the authority to select and/or approve all DSMD employees so assigned.

(2) Those personnel whose duties require access to criminal history record information or to areas where such information is stored shall be subject to all personnel and physical security procedures established by the ACJIC Director.

(3) Those personnel working with or having access to criminal history record information shall be subject to legal and administrative sanctions provided for the abuse, unauthorized access, disclosure, or dissemination of criminal justice information.

B. Nongovernmental agencies providing contractual services to the ACJIC, and whose employees will require access to criminal justice information or to areas where such information is stored, shall enter into a privacy and security agreement with the ACJIC. The agreement shall include provisions similar to those in paragraph A (1), (2), and (3) above.

3. In-Service Training. All persons working with or having access to criminal justice information collected, stored, processed, or disseminated by the ACJIC shall be made aware of all statutes and regulations pertaining to the privacy and security of such information. This training requirement shall apply to remote terminal operators and system personnel of local/regional criminal justice information systems interfaced with the ACJIC as well as ACJIC employees.

The ACJIC Director shall determine the method and frequency of required privacy and security training.

4. Penalties for Violation of System Security Standards. Persons employed by the ACJIC or Commission or who are otherwise under the management control of the ACJIC Director, who are found to be in violation of ACJIC privacy and security regulations or statutes and regulations governing the privacy and security of criminal justice information, may be subject to the following administrative penalties:

A. A formal reprimand which will be made a part of the employee's permanent personnel record.

B. Suspension without pay for a period not to exceed thirty days.

C. Termination of employment.

All administrative penalties enumerated herein shall be administered in strict compliance with the provisions of the Alabama Code, Title 55, Chapter 9, Personnel Department and Merit System.

5. System Discipline. Persons functioning as operators for remote terminals and the personnel of local or regional criminal justice information systems that are interfaced with the statewide criminal justice information system are subject to the system security standards established by the ACJIC Commission and promulgated through ACJIC privacy and security regulations.

Any violation of the provisions of these regulations by any employee or officer of any public agency, in addition to any applicable criminal or civil penalties, should be punished by suspension, discharge, reduction in grade, or any other administrative penalties as are deemed appropriate by the agency; provided, however, that such penalties shall be imposed only if they are permissible under any applicable statutes governing the employment of the individual in question.

This regulation has been reviewed and approved by the ACJIC Commission.

Attest:

R. W. Blaylock, Director
Alabama Criminal Justice Information Center

Privacy & Security Regulation
No. 005

State of Alabama
Criminal Justice Information Center
858 South Court Street
Montgomery, Alabama 36130

PHYSICAL SECURITY

Purpose: This regulation defines physical security standards for the Alabama Criminal Justice Information Center and assigns responsibilities for monitoring system security.

1. Responsiblity for System Security. The Director of the Alabama Criminal Justice Information Center shall insure that all personnel and units of government participating in the Alabama Criminal Justice Information System comply with the security standards adopted by the ACJIC Commission and those specified by other statutes and regulations applicable to criminal justice information systems.

2. Physical Security Standards.

A. The Alabama Criminal Justice Information Center.

The ACJIC Director shall develop and enforce procedures to reasonably protect the ACJIC from unauthorized access, theft, sabotage, natural or manmade disaster. Such procedures shall address the following areas:

(1) Fire detection and suppression systems.

(2) Access control to the ACJIC facility; particular attention must be given to areas where criminal justice information is processed and stored.

(3) Visitor identification and control procedures.

(4) Structural design of the ACJIC facility to reduce the possibility of physical damage to the system and information.

(5) Supporting utilities.

(6) Document control procedures to insure the proper handling of criminal justice records.

B. Local/Regional Criminal Justice Information Systems.

Agencies operating criminal justice information systems which interface with the ACJIC shall develop and implement security procedures in the following areas:

(1) Computer centers should be protected from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters.

(2) System personnel who have direct access to ACJIC criminal history record information must be screened in accordance with the requirements established by the ACJIC Commission.

(3) Visitors to computer centers having direct access to ACJIC criminal justice information must be accompanied by staff personnel at all times.

(4) Printed copies of criminal history record information obtained through the ACJIC must be afforded security to prevent unauthorized access or dissemination. Printed records should be destroyed when no longer needed.

(5) Remote terminal devices accessing the ACJIC through local/regional criminal justice information systems are subject to all privacy and security regulations issued by the ACJIC Commission.

C. ACJIC Remote Terminal Devices

Agencies having direct terminal access to the ACJIC or terminal access through a local or regional information system, shall institute procedures to reasonably protect the terminal device and any criminal justice information obtained through the terminal. Such procedures must include the following minimum measures:

(1) Terminal devices must be placed in physically secure locations within the authorized agency. To be secure, the agency operating the terminal must be able to control physical access to the device on a twenty-four hour per day, seven-day per week basis.

(2) Remote terminal operators must be screened in accordance with the requirements established by the ACJIC Commission.

(3) Printed copies of criminal history record information obtained through ACJIC remote terminals must be afforded security to prevent unauthorized access to or use of that information.

This regulation has been reviewed and approved by the ACJIC Commission.

Attest:

R. W. Blaylock, Director
Alabama Criminal Justice Information Center

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	12.62.010	X	
2. Privacy and Security			
3. Dissemination Regulations	12.62.030 Reg. 6AAC 60.070	X X	
4. Inspection	12.62.030 Reg. 6AAC 60.080(5)	X X	
5. Challenge	12.62.030 Reg. 6AAC 60.080(5)	X	
6. Judicial Review	12.62.030	X	
7. Purge: Non-Conviction	12.62.040 Reg. 6AAC 60.100	X X	
8. Purge: Conviction	12.62.040	X	
9. Seal: Non-Conviction	Reg. 6AAC 10.100	X	
10. Seal: Conviction	Reg. 6AAC 60.100	X	
11. Remove Disqualification			
12. Deny CJ Record			
13. Research Access	12.62.030(c) Reg. 6AAC 60.090	X X	
14. Accurate & Complete			
15. Dedicate	12.62.040	X	
16. Civil Remedy	12.62.060	X	
17. Criminal Penalty			
18. Public Records			
19. Separate Files	Reg. 6AAC, 60.030	X	
20. Intelligence Collection	12.62.010 12.62.015	X X	
21. Intelligence Dissemination	12.62.030(e) 12.62.010	X X	
22. Security	12.62.040 12.62.050 Reg. 6AAC 60.030; 60.040	X X X	
23. Transaction Logs	12.62.030 Reg. 6AAC, 60.070	X X	
24. Train Employees	12.62.030(D)	X	
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	41-2203(3) 41-1750	X	X
2. Privacy and Security			
3. Dissemination Regulations	41-1750 13-1273 Reg. 13-1-01 13-1-05,13-1-06	X X	 X X
4. Inspection	41-1750(9)	X	
5. Challenge			
6. Judicial Review			
7. Purge: Non-Conviction			
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction	13-1761 13-1744	X X	
11. Remove Disqualification	13-1742 13-1743 13-1744	X X X	
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete	Reg. 13-1-02		X
15. Dedicate			
16. Civil Remedy	39-121.02 41-1750	X X	
17. Criminal Penalty	13-1761	X	
18. Public Records	39-121.01	X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination	41-1750	X	
22. Security			
23. Transaction Logs			
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ	39-121.01	X	

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

CHAPTER 17.—CRIMINAL JUSTICE INFORMATION SYSTEMS

ARTICLE 1. ARIZONA CRIMINAL JUSTICE INFORMATION SYSTEM

Sec.
41-2201. Definitions.
41-2202. Comprehensive data systems policy board; term, compensation.
41-2203. Powers and duties of the board.
41-2204. System manager; powers and duties.
41-2205. Criminal justice information system central repository.
41-2206. Disciplinary action; system participants.

Chapter 17, consisting of Article 1, §§ 41-2201 to 41-2206, was added by Laws 1977, Ch. 131, § 2, effective May 31, 1977.

ARTICLE 1. ARIZONA CRIMINAL JUSTICE INFORMATION SYSTEM

Article 1, consisting of §§ 41-2201 to 41-2206, was added by Laws 1977, Ch. 131, § 2, effective May 31, 1977.

§ 41-2201. Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the comprehensive data system policy board.

2. "Center" means the criminal justice statistical analysis center, an operating section within the Arizona state justice planning agency.

3. "Component information system" means an independent information system serving one or more criminal justice agencies and which may participate in the criminal justice information system.

4. "Criminal history record information" means data collected on individuals by criminal justice agencies which consists of identifiable descriptions and notations of arrest, detentions, indictments, criminal informations or other formal criminal charges and any disposition arising therefrom, including sentencing, correctional supervision and release. Criminal history record information does not mean identification information, such as fingerprint records, to the extent such information does not indicate involvement of the individual in the criminal justice system, information associated with the administrative functions or correctional treatment process of a criminal justice agency or juvenile justice information.

5. "Criminal justice agency" means any court or government agency or division of such agency which performs the administration of criminal justice pursuant to statutory authority or executive order and which allocates a substantial part of its budget to the administration of criminal justice.

6. "Manager" means criminal justice information system manager.

7. "System" means criminal justice information system. Added Laws 1977, Ch. 131, § 2, eff. May 31, 1977.

Library References
States ⇐45.
C.J.S. States §§ 52, 66.

§ 41-2202. Comprehensive data systems policy board; term; compensation

A. There shall be a comprehensive data systems policy board consisting of twenty-one members for the purpose of administering and managing the Arizona criminal justice information system. Of the members first appointed, four shall be appointed for a term of one year and five members each for a term of two years. A member may be reappointed. Upon the expiration of any term of an appointed member, a successor shall be appointed for a full term of two years which shall expire on the third monday in January of the appropriate year. Appointment to fill a vacancy caused otherwise than by expiration of a term shall be for the unexpired portion of such term. The board shall consist of the following members:

1. The director of the department of public safety.
2. The director of the department of corrections.

3. A justice of the Arizona supreme court appointed by the chief justice.
4. The presiding judge of the Maricopa county superior court.
5. The presiding judge of the Pima county superior court.
6. The sheriff of Maricopa county.
7. The sheriff of Pima county.
8. A member appointed by the Arizona chief probation officers' association.
9. The chief of police of Phoenix.
10. The chief of police of Tucson.
11. The chief adult probation officer of Maricopa county.
12. The chief adult probation officer of Pima county.
13. The county attorney of Maricopa county.
14. The county attorney of Pima county.
15. A state senator appointed by the president of the senate.
16. A state representative appointed by the speaker of the house.
17. Two lay members appointed by the governor to represent the public, neither of whom is employed by a criminal justice agency or holds an elected or appointed public office.
18. A member appointed by the Arizona police chiefs association.
19. A member appointed by the Arizona association of county attorneys.
20. A member appointed by the Arizona association of county sheriffs.

B. The governor shall appoint a member to be chairman for a term of one year. A chairman may be reappointed.

C. The members shall receive no compensation but shall be entitled to reimbursement for expenses in accordance with the provisions of title 38, chapter 4, article 2.[1] Added Laws 1977, Ch. 131, § 2, eff. May 31, 1977.

[1] Section 38-621 et seq.

Library References
States ⇐45.
C.J.S. States §§ 52, 66.

§ 41-2203. Powers and duties of the board

A. The board shall:

1. Establish the technical criteria to be followed for connecting a component information system to the system.

2. Adopt bylaws for the administration of the board.

3. Adopt and promulgate rules and regulations for the administration and management of the system.

4. Conduct hearings to adjudicate disputes between criminal justice agencies if the dispute concerns lack of compliance by either of such agencies with rules and regulations promulgated by the board.

5. Receive petitions for review of criminal history record information from the subject of such information, conduct hearings to determine the accuracy of the information concerning the subject and amend such criminal history record information if inaccurate.

6. Formulate policies, plans and programs for expansion of the system as needed.

7. Set developmental priorities for the system.

8. Develop and submit to the legislature cost sharing formula for participants in the system.

9. Advise and make recommendations to the governor, legislature, judiciary and local governments on matters concerning the objectives of the board.

10. Make an annual report on the operation of the board.

11. Provide information to the public on the purposes of the system.

12. Adopt and promulgate rules and regulations for the privacy, confidentiality and security of the system and the dissemination of criminal history record information.

13. Set policy, establish guidelines, and oversee the collection, analysis and publication of statewide criminal justice data and statistics by the center.

14. Review research studies and reports produced by the center prior to the publication of such studies and reports.

15. Adopt plans for the implementation of the system and the privacy, security and confidentiality of criminal history record information.

B. The board may:

1. Establish joint research and information facilities with governmental and private agencies.

2. Accept and expend public and private grants of funds, gifts and contributions to effectuate the purposes of this chapter. Added Laws 1977, Ch. 131, § 2, eff. May 31, 1977.

Cross References
Administration, state justice planning agency, see § 41-2351 et seq.
Rules, administrative procedure, see § 41-1001 et seq.

Library References
States ⇐45.
C.J.S. States §§ 52, 66.

§ 41-2204. System manager; powers and duties

There shall be a system manager appointed by the board. The manager shall serve at the pleasure of and be responsible to the board. The manager is exempt from the provisions of the state personnel system and is eligible to receive compensation pursuant to § 38-611. The manager shall:

1. Execute the policies of the board and supervise the operations of the system.

2. Coordinate and standardize the design, development and implementation of the system and subsystem.

3. Provide for system and subsystem planning.

4. Enforce the rules and regulations relating to the security, privacy, confidentiality and dissemination of criminal history record information.

5. Submit recommendations to the board concerning establishment of research, statistical and planning programs including a study of the system.

6. Provide criminal justice agencies with criminal history record information for operational and management purposes in accordance with the rules and regulations established by the board governing the dissemination of such information.

7. Perform such other powers and duties as may be prescribed or delegated by the board. Added Laws 1977, Ch. 131, § 2, eff. May 31, 1977.

Library References
States ⇐45.
C.J.S. States §§ 52, 66.

§ 41-2205. Criminal justice information system central repository

A. There shall be a central repository for the collection, storage and dissemination of criminal history record information. The department of public safety shall operate the central repository pursuant to the rules and regulations adopted by the board. The department of public safety shall conduct annual audits to insure each criminal justice agency is complying with rules and regulations governing the maintenance and dissemination of criminal history record information.

B. Each criminal justice agency shall report criminal history record information, whether collected manually or by means of an automated system, to the central repository pursuant to the provisions of §§ 41-1750 and 41-1751. Added Laws 1977, Ch. 131, § 2, eff. May 31, 1977.

Cross References
Criminal identification section, department of public safety, operation of criminal justice information system central repository, see § 41-1750.

Library References
States ⇐45.
C.J.S. States §§ 52, 66.

§ 41-2206. Disciplinary action; system participants

Any agency, company or individual who fails to conform to the rules and regulations adopted pursuant to this chapter may be subject to removal from participation in the system by action of the board. Added Laws 1977, Ch. 131, § 2, eff. May 31, 1977.

Library References
States ⇐45.
C.J.S. States §§ 52, 66.

CHAPTER 18.—ARIZONA STATE JUSTICE PLANNING AGENCY

ARTICLE 1. GENERAL PROVISIONS

Sec.
41-2251. Arizona state justice planning agency; establishment; powers and duties.
41-2252. Executive director; staff.
41-2253. Arizona criminal justice planning supervisory board; membership; powers and duties; terms.
41-2254. Termination of agency.

Chapter 18, consisting of Article 1, §§ 41-2251 to 41-2254, was added by Laws 1978, Ch. 110, § 1, effective June 1, 1978.

Another Chapter 18, consisting of Article 1, §§ 41-2251 to 41-2256, added by Laws 1978, Ch. 180, § 7, was transferred and renumbered as Chapter 19, Article 1, §§ 41-2301 to 41-2305.

Another Chapter 18, relating to legislative review of agencies, consisting of Article 1, §§ 41-2251 to 41-2254, and Article 2, §§ 41-2261 to 41-2265, and added by Laws 1978, Ch. 210, § 1, effective September 3, 1978, was transferred and renumbered as Chapter 20, Article 1, §§ 41-2351 to 41-2354, and Article 2, §§ 41-2361 to 41-2374.

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of §§ 41-2251 to 41-2254, was added by Laws 1978, Ch. 110, § 1, effective June 1, 1978.

§ 41-2251. Arizona state justice planning agency; establishment; powers and duties

A. There is established an Arizona state justice planning agency.

B. The Arizona state justice planning agency shall:

1. In cooperation with local and state criminal justice planning efforts, prepare and submit to the governor and the legislature an annual plan for the improvement of criminal justice and juvenile justice in this state. The annual plan shall be comprehensive in its scope and applicability.

2. Comply with federal statutes, regulations [1] or guidelines relating to comprehensive criminal justice planning.

3. In cooperation with local governments and regional planning agencies, develop standards for local and regional criminal justice planning to facilitate incorporation of local and regional plans in the state plan.

4. Report annually to the governor and the legislature the accomplishments of the previous year and the status of criminal and juvenile justice programs in progress.

5. Advise the governor and the legislature on matters pertaining to the improvement of criminal and juvenile justice and recommend legislation for improvement of the criminal or juvenile justice systems.

6. Apply for, receive, allocate and disburse grants or funds made available by the United States government, foundations, corporations and other businesses, agencies or individuals for the purposes of this chapter and provide the accounting, auditing and administrative procedures necessary to assure proper fiscal and management control for the disbursement of funds under the control of the agency.

MICROFILMED FROM BEST AVAILABLE COPY

CHAPTER 1

DEPARTMENT OF PUBLIC SAFETY
CRIMINAL IDENTIFICATION SECTION

(Authority: A.R.S. § 41-1750 et seq.)

ARTICLE 1. GENERAL PROVISIONS

Sec.

R13-1-01. Explanation of Rules and Regulations.
R13-1-02. Provide accurate and timely information.
R13-1-03. Latent fingerprint identification assistance.
R13-1-04. Information required of law enforcement agencies.
R13-1-05. Procedures and restrictions on dissemination of information.
R13-1-06. Procedures for dissemination of information to non-law enforcement agencies.
R13-1-07. Procedures for dissemination of information to licensing and regulatory agencies.
R13-1-08. Procedures for dissemination to, or correction of information by, the subject of the records.
R13-1-09. Right to hearing after denial or restriction of information.

ARTICLE 1. GENERAL PROVISIONS

R13-1-01. Explanation of Rules and Regulations

The following Rules and Regulations relating to the procurement and dissemination of information in the Criminal Identification Section are authorized by A.R.S. § 41-1750 F. (Supp. 1971-72). All materials and information collected pursuant to A.R.S. § 41-1750 are hereby classified as confidential – the release of, or use of said materials or information except as provided by A.R.S. § 41-1750 is prohibited and access to the files is limited to authorized employees of the Department of Public Safety's Criminal Identification Section.

R13-1-02. Provide Accurate and Timely Information

The primary function of the Department of Public Safety's Criminal Identification Section is to provide accurate and timely information to all law enforcement agencies regarding criminal history information. To disseminate this information to law enforcement agencies, the Department of Public Safety provides toll-free telephone service and teletype service, or information may be obtained in person after providing proper identification.

Historical Note

Former Rule 1.

R13-1-03. Latent Fingerprint Identification Assistance

A. The Criminal Identification Section of the Department of Public Safety shall maintain a latent fingerprint identification laboratory and a sufficient number of latent fingerprint identification officers to provide assistance as needed to any law enforcement agency on a twenty-four-hour-a-day basis for the detection and development of latent fingerprints.

B. The chief officer of any law enforcement agency, or his authorized representative, may obtain the assistance of these officers by contacting the Criminal Identification Section of the Department of Public Safety.

C. The latent identification officers shall also be available to process evidence submitted to the Criminal Identification Section for the purpose of detecting latent fingerprints and shall provide expert court testimony, as required.

D. The chief officer of any law enforcement agency, or his authorized representative, upon submitting evidence to the Criminal Identification Section, shall complete any form required at the time of submitting such evidence.

Historical Note

Former Rule 2.

R13-1-04. Information Required of Law Enforcement Agencies

All law enforcement agencies of the State of Arizona shall provide the Criminal Identification Section of the Department of Public Safety the following information:

1. A complete set of fingerprints on each initial arrest. Said fingerprints will be imprinted on the appropriate fingerprint form that is provided by the Federal Bureau of Investigation.

2. For each subsequent arrest, each law enforcement agency of the State of Arizona shall provide to the Criminal Identification Section of the Department of Public Safety one of the following:

a. A complete set of fingerprints on the appropriate F.B.I. fingerprint form, and include name, description data, and arrest data; i.e., description of charge, statute number, Arizona Criminal Identification Section number, and F.B.I. number, if available.

b. Department of Public Safety Form 30.60.03 entitled "Additional Arrest Information" completed in full, with Arizona Criminal Identification Section number and the inked impressions of the arrested individual's right four fingers. If the right hand is amputated, imprint the left four fingers and so indicate. In cases where the Criminal Identification Section number is not available, follow instructions in paragraph 2a, above.

3. In all cases where possible on an initial arrest, each law enforcement agency of the State of Arizona shall provide the Criminal Identification Section of the Department of Public Safety with a photograph of the person arrested, and on the back of said photograph shall inscribe the subject's name, date of birth, description of charge, and statute violated.

Historical Note

Former Rule 3.

R13-1-05. Procedures and Restrictions on Dissemination of Information

A. The employees of the Criminal Identification Section of the Department of Public Safety shall not release information until after determining that the requesting party is, in fact, entitled to said information. After this determination has been made, information shall be disseminated in the following manner:

1. In-Person Request: Information shall be released after satisfactory identification has been made.

2. Telephone Requests: Requested information shall be recorded along with the requesting party's name, identification number, agency of employment, dated and time-stamped. Information to be disseminated will only be given by return phone call, teletype or letter to a previously designated phone number or address at the agency of employment. Information will not be returned to a private phone number.

3. Mail Requests: Requests for information received by mail will only be accepted on agency letterhead, when signed by the chief officer of the requesting agency or his authorized representative. All written requests must contain the name of the requesting party and the purpose for obtaining the requested information. All requested information shall be return-addressed to the requesting officer and directed to the requesting agency's physical address.

4. Teletype Requests: Teletype requests will be answered as soon as possible by return teletype and, if requested, additional information will be forwarded to the requesting agency by mail.

B. The chief officer of any agency receiving information from the Criminal Identification Section shall cooperate with officers of the Department of Public Safety in the investigation of violations of A.R.S. § 41-1750 and these rules.

C. In addition to the penalties provided by law, any department or agency which misuses or releases information contrary to law or violates any provision of these rules may be temporarily denied information from the Criminal Identification Section pending an investigation by the department and shall not be reinstated until such time as the chief of the Criminal Identification Section is satisfied that the department or agency is in full compliance with the law and these rules.

D. Any person convicted under the provisions of A.R.S. § 41-1750 D shall be denied further information from such files unless such request for information is accompanied by an affidavit signed by the chief of the requesting agency. Such affidavit shall set forth:

1. The facts and circumstances surrounding the prior conviction, and

2. A statement by the chief of the agency stating that he assumes full responsibility for the lawful use of any released information.

Historical Note

Former Rule 4.

R13-1-06. Procedures for Dissemination of Information to Non-law Enforcement Agencies

A. The Department of Public Safety's Criminal Identification Section shall provide information from its records relating to convictions for public offenses to non-law enforcement agencies of the state or its political subdivisions for the purpose of evaluating the fitness of prospective employees of such agencies. Compliance to this rule will be made by the Criminal Identification Section after such agency has fully complied with paragraph G of A.R.S. § 41-1750, and the Criminal Identification Section has received, in writing, proper authorization to disseminate said information to such agency from the Attorney General of the State of Arizona.

B. Upon receiving said authorization from the Attorney General, the chief of the Criminal Identification Section shall contact the chief officer of such agency and establish rules regarding the procurement and dissemination of information as outlined in R13-1-05.

Historical Note

Former Rule 5.

R13-1-07. Procedures for Dissemination of Information to Licensing and Regulatory Agencies

A. The Department of Public Safety's Criminal Identification Section shall provide information from its records relating to convictions for public offenses to licensing and regulatory agencies of the state or its political subdivisions, for the purpose of evaluating the fitness of prospective licensees.

B. Compliance to this rule will be made by the Criminal Identification Section after such agency has fully complied with paragraph G of A.R.S. §41-1750 and the Criminal Identification Section has received, in writing, proper authorization to disseminate said information to such agency from the Attorney General of the State of Arizona.

C. Upon receiving said authorization from the Attorney General, the chief of the Criminal Identification Section shall contact the chief officer of such agency and establish rules regarding the procurement and dissemination of information as outlined in R13-1-05.

Historical Note

Former Rule 6.

R13-1-08. Procedures for Dissemination to, or Correction of Information by, the Subject of the Records

A. The subject of record or his attorney may be provided information contained on the "Arizona Criminal Offender Identification Records", DPS Form 30.60.04. The information on this record shall consist of dates and arrests, contributors of fingerprints, arrest numbers, charges of dispositions (where possible) which have occurred within the State of Arizona. The listing of this record shall be supported by fingerprints or other official documents contained in the Criminal Identification Section Criminal Offender Jacket relating to the subject of the record.

B. The information may be reviewed, or for specific need a copy obtained, after proper completion of a "Review of Criminal Offender Record Information" form, (DPS Form 30.60.05). The subject of the record to be reviewed must have his fingerprints imprinted upon this form. If a copy of the record is desired, the signature of the individual to whom the copy is released must be in the appropriate spaces both on the "Review of Criminal Offender Record Information" form and the "Arizona Criminal Offender Identification Record" being released. The name and identification number of the employee releasing the information must also be recorded on both forms.

C. The fingerprints on the "Review of Criminal Offender Record Information" form must be verified as being identical to the fingerprints of the subject of record

on file in the Criminal Identification Section by a Criminal Identification Section fingerprint technician or identification officer prior to any record being reviewed by the individual of record or his attorney.

D. The reviewing individual may challenge any entry contained on the "Arizona Criminal Offender Identification Record" that he knows to be incorrect. To challenge any entry on the "Arizona Criminal Offender Identification Records", DPS Form 30.60.07 the "Exception Taken to Criminal Offender Record Information" form must be properly completed. This form must then be signed by the subject of the record to which exceptions are taken. This form will then be filed with the Criminal Identification Section.

E. Upon receipt of an "Exception Taken to Criminal Offender Record Information" form, the employee accepting the form will place the current date and his/her serial number in the appropriate spaces. An audit of the record in question will begin within five days of receipt of this form and will be completed within fifteen working days.

F. To conduct an audit, the Criminal Identification Section shall contact each agency whose arrest(s) are challenged as exceptions. The Criminal Identification Section will obtain a set of fingerprints relating to the arrest in question and verify whether or not they belong to the subject of the record in question. The Criminal Identification Section will obtain a disposition for each of the entries challenged and record such dispositions in its files and cause such dispositions to be recorded with the appropriate federal agency whose responsibilities involve maintaining records of arrests and dispositions.

G. Upon completion of an audit, the "Exception Taken to Criminal Offender Record Information" form will be filed by the Criminal Information Section in the subject of such record's jacket. The chief of the Criminal Identification Section shall then complete DPS Form 30.60.06 "Notice of Results of Audit of Criminal Offender Record Information". The form shall be prepared in duplicate. The original shall be filed in the Criminal Identification Section jacket of the subject of the record. The copy shall be sent to the individual who submitted the exceptions.

Historical Note

Former Rule 7.

R13-1-09. Right to Hearing After Denial or Restriction of Information

A. Any party or agency who has been denied information or has suffered a penalty or restriction under these Rules and Regulations due to the actions or inactions of the Department of Public Safety shall have a right to a hearing regarding the denial of information or the penalty or restriction suffered – except any temporary denial of information under R13-1-05 pending an investigation by the Department of Public Safety which does not exceed three working days does not constitute a penalty or restriction, and no hearing shall be provided for departments or agencies affected by such temporary denial.

B. The hearing shall be conducted by from two to three officers holding the rank of Lieutenant or above in the Department of Public Safety and one to two chief officers of any agency served or an authorized representative of any such agency, to be appointed by the Director or, in his absence or at his direction, the chief of the Criminal Identification Section.

C. The required notice and hearing shall be in compliance with A.R.S. § 41-1009 et. seq.

Historical Note

Former Rule 8.

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	5-1101 5-1103	X X	
2. Privacy and Security			
3. Dissemination Regulations	42-401 42-410		X X
4. Inspection	5-1102 16-802 Reg. 3	X X X	
5. Challenge	5-1102 16-802 Reg. 4,5	X X	
6. Judicial Review			
7. Purge: Non-Conviction			
8. Purge: Conviction	5-1109	X	
9. Seal: Non-Conviction			
10. Seal: Conviction	43-1231	X	
11. Remove Disqualification	43-1231 1233	X X	
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete	5-1107 5-1112 16-802	X X X	
15. Dedicate			
16. Civil Remedy	16-808	X	
17. Criminal Penalty	5-1110 5-1111 16-808 43-1235	X X X X	
18. Public Records	16-801	X	
19. Separate Files			
20. Intelligence Collection	5-1102	X	
21. Intelligence Dissemination	Reg. 2	X	
22. Security	5-1103	X	
23. Transaction Logs	Reg. 6,7	X	
24. Train Employees	5-1112	X	
25. List Systems	16-804	X	
26. F.O.I. Including CJ	16-801	X	
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

ARKANSAS

BLANK PAGE

42-401. Department created. — For the purpose of enforcing the motor vehicle laws, traffic laws and other state laws relating to protecting and properly maintaining the State Highway System of the State of Arkansas and to render more effective the apprehension of criminals and the enforcement of criminal law, there is hereby created the Department of Arkansas State Police. The police officers hereinafter provided for shall be known as "Arkansas State Police." [Acts 1945, No. 231, § 1, p. 531.]

Compiler's Notes. Subsection (5) of § 5-914 provides for the transfer by type 2 transfer of the Department of Arkansas State Police and its functions, powers and duties to the Department of Public Safety, to be located in the Police Division. The effect of a type 2 transfer is provided for in § 5-902.

Cross-References. Accident report forms for traffic accidents prepared by department, § 75-908.

Automotive parts dealers, records of transactions required, enforcement by state police, §§ 75-1801 - 75-1806.

Certificate of approval of chauffeur's license to be issued by department, § 75-313.

Consultant, contract with, reports to division of revenue, department of finance and administration, §§ 6-620 -- 6-622.

Damages adjudged against state officers and employees, payment by state, §§ 12-3101 -- 12-3406.

Powers, duties and authority transferred from State Mine Inspector with respect to weighing of coal to State Police Department, § 52-708.1.

Reports of motor vehicle accidents made to, § 75-906.

Retirement of State Police, §§ 42-451 -- 42-464.

Scholarships for children of law enforcement officers and firemen, §§ 80-3359 -- 80-3362.

State Police Fund created, § 13-510.

Traffic convictions reported to, § 75-1013.

Section to Section References. Sections 42-401 -- 42-426 are referred to in § 13-503.13.

This chapter is referred to in § 5-911.

12-410. Criminal investigation and apprehension — Prevention of crime. — It shall be the duty of the Department of Arkansas State Police and its officers to cooperate with the heads of the several penal institutions of this State and as peace officers in the investigation and apprehension of criminals and the prevention of crime within the State, and use every means at their disposal in disseminating information that will more effectively expedite the detection of crime, the apprehension and conviction of criminals and promote the highest possible degree of efficiency in the enforcement of the penal laws of the State. [Acts 1945, No. 231, § 10, p. 531.]

MICROFILMED FROM BEST AVAILABLE COPY

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	11027 P.C. 13800 P.C. 13820 P.C. 13830 P.C.	X X X X	
2. Privacy and Security			
3. Dissemination Regulations	CH 1, Title II Sec. 703 11076, 11105 P.C. 13300 P.C.	X X X	
4. Inspection	CH 1, Title II Sec. 705 11105 (8) P.C. 11122 P.C.	X X X	
5. Challenge	11126 P.C.	X	
6. Judicial Review	11126 P.C.	X	
7. Purge: Non-Conviction	A.G. Reg.	X	
8. Purge: Conviction	A.G. Reg.	X	
9. Seal: Non-Conviction	851.8 P.C.	X	
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record	432.7 Labor Code		X
13. Research Access	11105 P.C. 11144 P.C. 13202 P.C. 13205 P.C.	X X X X	
14. Accurate & Complete	11105.5 P.C. 11112 P.C. 13127 P.C. 13150 P.C.	X X X X	
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty	6251 G.C. 11141 P.C. 13302 P.C.	X X X	
18. Public Records	6251 G.C.	X	
19. Separate Files	13102 P.C.	X	
20. Intelligence Collection	13102 P.C.	X	
21. Intelligence Dissemination			
22. Security	CH 1, Title II Sec 706 707 11077 P.C.	 X	X X
23. Transaction Logs	11078 P.C. 11105.5 P.C.	X X	
24. Train Employees	CH 1, Title II Sec. 710 11077 P.C.	 X	X
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ	6254 G.C.	X	

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

§ 432.7 Record of arrest or detention not resulting in conviction or referral or participation in diversion programs; prohibition of disclosure to or use by employer; violations; penalty

(a) No employer whether a public agency or private individual or corporation shall ask an applicant for employment to disclose, through any written form or verbally, information concerning an arrest or detention which did not result in conviction, or information concerning a referral to and participation in any pretrial or posttrial diversion program, nor shall any employer seek from any source whatsoever, or utilize, as a factor in determining any condition of employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record of arrest or detention which did not result in conviction, or any record regarding a referral to and participation in any pretrial or posttrial diversion program. As used in this section, a conviction shall include a plea, verdict, or finding of guilt regardless of whether sentence is imposed by the court. Nothing in this section shall prevent an employer from asking an employee or applicant for employment about an arrest for which the employee or applicant is out on bail or on his or her own recognizance pending trial.

(b) In any case where a person violates any provision of this section, or Article 6 (commencing with Section 11140) of Chapter 1 of Title 1 of Part 4 of the Penal Code, the applicant may bring an action to recover from such person actual damages or two hundred dollars ($200), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section shall entitle the applicant to treble actual damages, or five hundred dollars ($500), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(c) The remedies under this section shall be in addition to and not in derogation of all other rights and remedies which an applicant may have under any other law.

(d) Persons seeking employment as peace officers or for positions in law enforcement agencies with access to criminal offender record information or for positions with the Division of Law Enforcement of the Department of Justice are not covered by this section.

(e) Nothing in this section shall prohibit an employer at a health facility, as defined in Section 1250 of the Health and Safety Code, from asking an applicant for employment either of the following:

(1) With regard to an applicant for a position with regular access to patients, to disclose an arrest under any section specified in Section 290 of the Penal Code.

Underline indicates changes or additions by amendment

(2) With regard to an applicant for a position with access to drugs and medication, to disclose an arrest under any section specified in Section 11590 of the Health and Safety Code.

(f)(1) No peace officer or employee of a law enforcement agency with access to criminal offender record information maintained by a local law enforcement criminal justice agency shall knowingly disclose, with intent to affect a person's employment, any information contained therein pertaining to an arrest or detention or proceeding which did not result in a conviction, including information pertaining to a referral to and participation in any pretrial or posttrial diversion program, to any person not authorized by law to receive such information.

(2) No other person authorized by law to receive criminal offender record information maintained by a local law enforcement criminal justice agency shall knowingly disclose any information received therefrom pertaining to an arrest or detention or proceeding which did not result in a conviction, including information pertaining to a referral to and participation in any pretrial or posttrial diversion program, to any person not authorized by law to receive such information.

MICROFILMED FROM BEST AVAILABLE COPY

(3) No person, except those specifically referred to in Section 1070 of the Evidence Code, who knowing he or she is not authorized by law to receive or possess criminal justice records information maintained by a local law enforcement criminal justice agency, pertaining to an arrest or other proceeding which did not result in a conviction, including information pertaining to a referral to and participation in any pretrial or posttrial diversion program, shall receive or possess such information.

(g) "A person authorized by law to receive such information", for purposes of this section, means any person or public agency authorized by a court, statute, or decisional law to receive information contained in criminal offender records maintained by a local law enforcement criminal justice agency, and includes, but is not limited to, those persons set forth in Section 11105 of the Penal Code, and any person employed by a law enforcement criminal justice agency who is required by such employment to receive, analyze, or process criminal offender record information.

(h) Nothing in this section shall require the Department of Justice to remove entries relating to an arrest or detention not resulting in conviction from summary criminal history records forwarded to an employer pursuant to law.

(i) As used in this section, "pretrial or posttrial diversion program" means any program under Chapter 2.5 (commencing with Section 1000) or Chapter 2.7 (commencing with Section 1001) of Title 6 of Part 2 of the Penal Code, Section 13201, 13201.5 or 13352.5 of the Vehicle Code, or any other program expressly authorized and described by statute as a diversion program.

(Added by Stats.1975, c. 1043, p. 2457, § 2. Amended by Stats.1975, c. 1117, p. 2710, § 3; Stats.1977, c. 574, p. —, § 1, urgency, eff. Sept. 3, 1977.)

Effect of Stats.1975, c. 1117, on civil remedy for false arrest or imprisonment, see note under Penal Code § 849.5.

Furnishing of local summary criminal history information to authorized persons, application of this section, see Penal Code § 11200.

Section 5 of Stats.1975, c. 1117, p. 2712, provides:

"Section 3 of this act shall become operative only if Assembly Bill No. 255 [Stats. 1975, c. 1043] is chaptered and becomes effective and in such case shall become operative at the same time as Assembly Bill No. 255."

Former section 432.7, added by Stats.1974, c. 328, p. 650, § 1, relating to the same subject matter as the present section, was repealed by Stats.1975, c. 1043, p. —, § 1.

1975 Amendment. Rewrote section.

Derivation: Former section 432.7, added by Stats.1974, c. 328, p. 650, § 1.

Library references
Labor Relations ⇐2.
C.J.S. Labor Relations § 6.

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	24-32-401	X	
2. Privacy and Security			
3. Dissemination Regulations	24-72-305	X	
4. Inspection	24-72-303 24-72-304	X X	
5. Challenge	24-72-307	X	
6. Judicial Review	24-72-307	X	
7. Purge: Non-Conviction			
8. Purge: Conviction			
9. Seal: Non-Conviction	HB1070, 24-72-308 SB184, 24-72-308		X
10. Seal: Conviction	HB1070, 24-72-308 SB184, 24-72-308 24-72-305 (3)(4)	X	X
11. Remove Disqualification	24-72-308	X	
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete	24-32-412	X	
15. Dedicate			
16. Civil Remedy	30-10-101 24-72-305	X X	
17. Criminal Penalty	24-72-309	X	
18. Public Records	24-72-201 24-72-303	X X	
19. Separate Files	30-10-101	X	
20. Intelligence Collection			
21. Intelligence Dissemination	24-72-305	X	
22. Security			
23. Transaction Logs			
24. Train Employees			
25. List Systems	24-30-606 24-30-607	X X	
26. F.O.I. Including CJ	24-72-301 24-72-303	X X	
27. F.O.I. Excluding CJ	24-72-202	X	

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

CO-0-82

BLANK PAGE

AN ACT

HOUSE BILL NO. 1070. BY REPRESENTATIVES Schaiberry, Howe, DeMoulin, Lloyd, and Neale; also SENATORS Cole, Kogovsek, and Allshouse.

CONCERNING CRIMINAL JUSTICE RECORDS.

Be it enacted by the General Assembly of the State of Colorado:

Section 1. The introductory portion to 24-72-305 (1), Colorado Revised Statutes 1973, as enacted by chapter 340, Session Laws of Colorado 1977, is amended to read:

24-72-305. Allowance or denial of inspection - grounds - procedure - appeal. (1) The custodian of criminal justice records may allow any person to inspect such records or any portion thereof except on the basis of any one of the following grounds or as provided in ~~subsections (2), (3), (4), or~~ SUBSECTION (5) of this section:

Section 2. 24-72-308 (1) and (2), Colorado Revised Statutes 1973, as enacted by chapter 340, Session Laws of Colorado 1977, are amended, and the said 24-72-308 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

24-72-308. Sealing or limiting release of records. (1) (a) Any person in interest may petition the district court of his residence or of the district in which the arrest and criminal records information pertaining to him is located for the sealing of all or any part of said record, except basic identification information.

(b) ANY PERSON IN INTEREST MAY PETITION THE COURT IN WHICH THE ARREST AND CRIMINAL RECORDS INFORMATION PERTAINING TO HIM IS LOCATED FOR THE LIMITING OF RELEASE OF ALL OR ANY PART OF SAID RECORD, EXCEPT BASIC IDENTIFICATION INFORMATION. IF A CRIMINAL ACTION HAS PREVIOUSLY BEEN FILED IN A COURT,

---

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

MICROFILMED FROM BEST AVAILABLE COPY

THE PETITION PROVIDED FOR IN THIS PARAGRAPH (b) SHALL BE MADE A PART OF SUCH ACTION, AND NO ADDITIONAL DOCKET FEE SHALL BE REQUIRED. SUCH A PETITION SHALL BE FILED PURSUANT TO AND SHALL BE GOVERNED BY THE PROVISIONS OF SUBSECTION (1.1) OF THIS SECTION.

(1.1) (a) An order limiting the release of all or any part of said record may be obtained if:

(I) The record is a record of an official action involving conviction for a misdemeanor or a petty offense after which the individual has not been formally charged with another crime, other than a petty offense or a class 3 or class 4 misdemeanor traffic offense, for a period of five years following completion of sentence or satisfaction of conditions imposed in lieu of sentence; or

(II) The record is a record of an official action involving conviction for a felony after which the individual has not been formally charged with a crime, other than a petty offense or a class 3 or class 4 misdemeanor traffic offense, for a period of seven years following completion of sentence or satisfaction of conditions imposed in lieu of sentence.

(b) The state court administrator shall prepare and distribute to the clerks of the courts a standardized form to be used for all petitions for the limiting of release of said records. The clerks shall make the form available at their offices and upon request shall mail the form to any person requesting the same.

(c) Within five days of the receipt of such a form which has been completed and notarized, the clerk of the court shall send copies thereof to the district attorney and the Colorado bureau of investigation.

(d) If the district attorney or the Colorado bureau of investigation does not file a response objecting to the petition for the limiting of release of said records within thirty days after receipt of the petition by the clerk of the court, the court shall grant the petition and order that the record shall only be released to the person in interest or to a criminal justice agency of this state or to a similar agency of the United States government or any of the states of the United States of America. This order shall be made and entered without further action by the petitioner and without his appearance.

(e) (I) If the district attorney or the Colorado bureau of investigation files a response objecting to the petition for the limiting of release of said records within thirty days after receipt of the petition by the clerk of the court, stating that it can show unto the court that the provisions of paragraph (a) of this subsection (1.1) do not apply to the petitioner, the court shall deny the petition unless the petitioner files a written request for a hearing thereon within sixty days after the original date of receipt of the petition by the clerk of the court.

(II) At the time of filing the response objecting to the petition, the district attorney or the Colorado bureau of investigation shall serve upon the petitioner a copy of the response and a notice indicating to the petitioner

that his petition will be denied unless he files a written request for a hearing within sixty days after the original date of receipt of the petition by the clerk of the court.

(f) If a request for a hearing is received within the sixty-day period, the court shall set a date for a hearing, which hearing may be closed at the court's discretion, and notify the petitioner and the district attorney or the Colorado bureau of investigation of the date of said hearing. At the hearing, the court shall grant the petition unless the district attorney or the Colorado bureau of investigation shows that none of the provisions of paragraph (a) of this subsection (1.1) apply to the petitioner. Upon granting the petition, the court shall order that the record shall only be released to the person in interest or to a criminal justice agency of this state or to a similar agency of the United States government or any of the states of the United States of America. The hearing shall be held and the petition granted or denied whether or not the petitioner appears.

(g) The response and notice required by paragraph (e) of this subsection (1.1) and the notification required by paragraph (f) of this subsection (1.1) shall be served upon the petitioner by depositing the same in the United States mail, postage prepaid, certified, and return receipt requested, addressed to the petitioner at the address provided in the petition.

(h) Any order entered pursuant to this subsection (1.1) shall be directed to every custodian who may have custody of any part of arrest and criminal records information which is the subject of the order. Whenever a court enters an order pursuant to this subsection (1.1), it shall provide the Colorado bureau of investigation with a copy thereof. The Colorado bureau of investigation shall forward copies of such an order to every custodian which has furnished information to it pursuant to section 24-32-412 (3) concerning the subject of the order.

(i) Every custodian of the arrest and criminal records information subject to the order, within thirty days after entry of the order unless it is stayed pending an appeal, shall advise the court and the petitioner in writing of compliance with the order.

(j) Court orders sealing or limiting the release of records of official actions entered pursuant to this section shall not limit the operation of rules of discovery promulgated by the supreme court of Colorado.

(k) All arrest and criminal records information, whether existing prior to or after the effective date of this subsection (1.1), except basic identification information, is subject to an order limiting the release thereof in accordance with this subsection (1.1).

(1.2) (a) A court shall enter an order limiting access to arrest and criminal records information when the record is a record of an official action in which the individual is acquitted or in which the charges are dismissed. The order shall be entered as a matter of course, upon the court's own motion, thirty days after the dismissal or acquittal unless the defendant requests in writing or in open court that the record remain open. The defendant may subsequently withdraw the request that the record remain open by submitting a written authorization to the court to enter the order.

MICROFILMED FROM BEST AVAILABLE COPY

Upon receipt of such an authorization, the court shall enter the order. The provisions of paragraphs (h) and (j) of subsection (1.1) of this section shall apply to any order entered pursuant to this paragraph (a).

(b) An order limiting access to arrest and criminal records information entered pursuant to this subsection (1.2) shall state that the record shall only be released to the person in interest or to a criminal justice agency of this state or to a similar agency of the United States government or any of the states of the United States of America.

(1.3) (a) The custodian of any record of an arrest shall not allow inspection of the record of that arrest if the records in his custody and control do not show that the arrest was followed by the commencement of a trial thereon within two years after the arrest or was followed by a disposition prior to a trial within two years after the arrest; except that, subject to the provisions of subsections (1.1) and (1.2) of this section, the custodian shall allow the inspection of such a record if the person seeking the inspection provides information to the custodian which shows that the arrest has been followed by the commencement of a trial within two years after the arrest or has been followed by a disposition prior to a trial within two years after the arrest.

(b) For the purposes of this subsection (1.3), "disposition" includes deferred prosecution and deferred sentencing.

(c) This subsection (1.3) shall not restrict the right of the person in interest to inspect his own records, nor shall it deny access thereto by a criminal justice agency of this state or by a similar agency of the United States government or any of the states of the United States of America.

(2) Upon the filing of a petition or THE entering of a court order RELATING TO THE SEALING OF RECORDS, the court shall set a date for a hearing, which hearing may be closed at t court's discretion, and shall notify the district attorney, the arresting age , and any other person or agency who the court has reason to believe may have relevant information related to the sealing of such record.

(9) (a) Whenever a defendant has charges against him dismissed, is acquitted, or is sentenced following a conviction, he shall be advised by the judge of his rights concerning the sealing or limiting the release of his criminal justice records if he complies with the applicable provisions of subsections (1) to (3) of this section.

(b) Whenever a defendant completes his sentence or satisfies conditions imposed in lieu of sentence, the person having immediate supervision of the defendant when he is released or the prison facility releasing the defendant shall again advise the defendant of his right to petition for an order of court sealing or limiting the release of his criminal justice records if he complies with the applicable provisions of subsections (1) to (3) of this section.

Section 3. 24-72-308 (3) (b), Colorado Revised Statutes 1973, as enacted by Session Laws of Colorado 1977, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

24-72-308. Sealing or limiting release of records. (3) (b) Any order entered pursuant to this subsection (3) shall be directed to every custodian

who may have custody of any part of arrest and criminal records information which is the subject of the order. Whenever a court enters an order pursuant to this subsection (3), it shall provide the Colorado bureau of investigation with a copy thereof. The Colorado bureau of investigation shall forward copies of such an order to every custodian which has furnished information to it pursuant to section 24-32-412 (3) concerning the subject of the order.

Section 4. **Repeal.** 24-72-305 (2), (3), and (4), Colorado Revised Statutes 1973, as enacted by Session Laws of Colorado 1977, are repealed.

Section 5. **Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 5, 1978

SENATE BILL NO. 184. BY SENATORS Cole, Kadlecek, and Phelps; also REPRESENTATIVES Howe, Kopel, DeHerrera, Hudson, McCroskey, and Pena.

CONCERNING CRIMINAL JUSTICE RECORDS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 24-72-308 (1) (a), (1.1) (c), (1.1) (d), (1.1) (e), (1.1) (f), and (9), Colorado Revised Statutes 1973, as amended, are amended, and the said 24-72-308 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

24-72-308. Sealing or limiting release of records. (1) (a) Any person in interest may petition the district court ~~of his residence or~~ of the district in which the arrest and criminal records information pertaining to him is located for the sealing of all or any part of said record, except basic identification information.

(1.1) (c) Within five days of the receipt of such a form which has been completed and notarized, the clerk of the court shall send copies thereof to the district attorney. ~~and the Colorado bureau of investigation.~~

(d) If the district attorney ~~or the Colorado bureau of~~ investigation does not file a response objecting to the petition for the limiting of release of said records within thirty days after receipt of the petition by the clerk of the court, the court shall grant the petition and order that the record shall only be released to the person in interest or to a criminal justice agency of this state or to a similar agency of the United States government or any of the states of the United States of America. This order shall be made and entered without further action by the petitioner and without his appearance.

(e) (I) If the district attorney ~~or the Colorado bureau of~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

MICROFILMED FROM BEST AVAILABLE COPY

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Fred E. Anderson
PRESIDENT OF
THE SENATE

Robert F. Burford
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Marjorie L. Rutenbeck
SECRETARY OF
THE SENATE

Lorraine F. Lombardi
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED March 13, 1979 11:30 A.M.

Richard D. Lamm
GOVERNOR OF THE STATE OF COLORADO

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority			
2. Privacy and Security			
3. Dissemination Regulations	78.200(11)(12)(13) 4-191 29-16 54-90	 X X X	X
4. Inspection	78.200(10) 4-193	 X	X
5. Challenge	78.200(7) 4-193	 X	X
6. Judicial Review	4-194 4-195	X X	
7. Purge: Non-Conviction	78.200(5) 29-15 54-90	 X X	X
8. Purge: Conviction	54-90	X	
9. Seal: Non-Conviction	54-90	X	
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record	54-90	X	
13. Research Access	78.200(11)		X
14. Accurate & Complete	78.200(8)		X
15. Dedicate			
16. Civil Remedy	4-197	X	
17. Criminal Penalty	1-21(K) 29-17	X X	
18. Public Records	1-15 1-19 1-21(j)	X X X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination	1-19	X	
22. Security	78.200(6) 4-193	 X	X
23. Transaction Logs	4-193	X	
24. Train Employees	78-200(6)		X
25. List Systems			
26. F.O.I. Including CJ	4-193	X	
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

PUBLIC ACT NO. 78-200

AN ACT CONCERNING SECURITY AND PRIVACY OF CRIMINAL HISTORY RECORD INFORMATION AS REQUIRED BY FEDERAL REGULATIONS.

Section 1. (NEW) For purposes of this act, the following definitions shall apply:

(a) "Criminal history record information" means information compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender notations of arrests, releases, detentions, indictments, informations, or other formal criminal charges or any events and outcomes arising from those arrests, releases, detentions, including pleas, trials, sentences, appeals, incarcerations, correctional supervision, paroles and releases; but does not include intelligence, presentence investigation or investigative information.

(b) "Criminal justice agency" means any court with criminal jurisdiction, the department of motor vehicles, or any other governmental agency created by statute which is authorized by law and engages, in fact, as its principal function in activities constituting the administration of criminal justice; including but not limited to, organized municipal police departments, the state police department, department of correction, office of adult probation, the Connecticut justice commission, state's attorneys, assistant state's attorneys, deputy assistant state's attorneys, parole board, pardon board, bail commissioners, coroners and medical examiner. It shall also include any component of a public, noncriminal justice agency if such component is created by statute and is authorized by law and, in fact, engages as its principal function in activities constituting the administration of criminal justice.

(c) "Conviction information" means criminal history record information which has not been erased, as provided in section 54-90 of the 1977 court reorganization supplement to the general statutes, and which discloses that a person has pleaded guilty or nolo contendere to, or was convicted of, any criminal offense, and the terms of the sentence.

(d) "Current offender information" means information on the current status and location of all persons who (1) are arrested or summoned to appear in court; (2) are being prosecuted for any criminal offense in superior court; (3) have an appeal pending from any criminal conviction; (4) are detained or incarcerated in any correctional facility in this state; or (5) are subject to the jurisdiction or supervision of any probation, parole or correctional agency in this state, including persons transferred to other states for incarceration or supervision.

(e) "Non-conviction information" means (1) criminal history record information that has been "erased" pursuant to section 54-90 of the general statutes; (2) nolles that have not been erased; (3) information relating to persons granted youthful offender status; (4) any information which has been replaced with a substitute information; (5) continuances which are more than thirteen months old. Non-conviction information does not mean conviction information or current offender information.

(f) "Disclosure" means the communication of information to any person by any means.

(g) "Dismissal" means (1) prosecution of the charge against the accused was declined pursuant to rules of court or statute; or (2) the judicial authority granted a motion to dismiss pursuant to rules of court or statute; or (3) the judicial authority found that prosecution is no longer possible due to the limitations imposed by section 54-193 of the general statutes.

Sec. 2. Subsection (i) of section 4-190 of the general statutes is repealed and the following is substituted in lieu thereof:

MICROFILMED FROM BEST AVAILABLE COPY

(i) "Personal data" means any information about a person's education, finances, medical or emotional condition or history, [criminal history,] employment or business history, family or personal relationships, reputation or character which because of name, identifying number, mark or description can be readily associated with a particular person. "Personal data" shall not be construed to make available to a person any record described in subdivision (2) of subsection (b) of section 1-19.

Sec. 3. Section 29-11 of the general statutes is repealed and the following is substituted in lieu thereof:

The bureau in the state police department known as the state police bureau of identification shall be maintained for the purposes *(1)* of providing an authentic record of each person [over] sixteen years of age OR OVER who is charged with the commission of any crime involving moral turpitude, [and] *(2)* of providing definite information relative to the identity of each person so arrested, [and] *(3)* of providing a record of the final judgment of the court resulting from such arrest, UNLESS SUCH RECORD HAS BEEN ERASED PURSUANT TO SECTION 54-90, AND (4) FOR MAINTAINING A CENTRAL REPOSITORY OF COMPLETE CRIMINAL HISTORY RECORD DISPOSITION INFORMATION. The commissioner of state police is directed to maintain the state police bureau of identification, which bureau shall receive, classify and file in an orderly manner all fingerprints, pictures and descriptions, including previous criminal records as far as known of all persons so arrested, and shall classify and file in a like manner all identification material and records received from the government of the United States, and from the various state governments and subdivisions thereof, and shall cooperate with such governmental units in the exchange of information relative to criminals. THE RECORD OF ALL ARRESTS REPORTED TO THE BUREAU AFTER MARCH 16, 1976, SHALL CONTAIN INFORMATION OF ANY DISPOSITION WITHIN NINETY DAYS AFTER THE DISPOSITION HAS OCCURRED.

Sec. 4. Section 29-12 of the general statutes is repealed and the following is substituted in lieu thereof:

All persons arrested for crime as described in section 29-11 shall submit to the taking of their fingerprints and physical description and all sheriffs, constables and chiefs of police of organized police departments and the commanding officers of state police stations shall immediately furnish to the state police bureau of identification two copies of a standard identification card on which shall be imprinted fingerprints of each person so arrested, together with the physical description of, and such information as said bureau may require with respect to, such arrested person. All wardens, the community correctional center administrator and superintendents of correctional institutions shall furnish to the state police bureau of identification such information with respect to prisoners as said bureau requires. THE COMMISSIONER OF STATE POLICE MAY ADOPT REGULATIONS FOR THE SUBMISSION TO AND THE TAKING OF FINGERPRINTS AS REQUIRED UNDER THIS SECTION WHICH WILL PROMOTE EFFICIENCY AND BE CONSISTENT WITH ADVANCES IN AUTOMATION AND TECHNOLOGY.

Sec. 5. Section 29-15 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) On or after October 1, 1974, when any person, having no record of prior criminal conviction, whose fingerprints and pictures are so filed has been found not guilty of the offense charged, or has had such charge dismissed or nolled, his fingerprints, pictures and description and other identification data and all copies and duplicates thereof, shall, be returned to him not later than sixty days after the finding of not guilty or after such dismissal or in the case of a nolle within sixty days after thirteen months of such nolle.

(b) Any person having no record of prior criminal conviction whose fingerprints and pictures are so filed, who has been found not guilty of the offense charged or has had such charge dismissed or nolled prior to October 1, 1974, may, upon application to the [clerk of the court,] PERSON CHARGED WITH THE RETENTION AND CONTROL OF SUCH IDENTIFICATION DATA AT THE STATE POLICE BUREAU OF IDENTIFICATION, have his fingerprints, pictures and description and other identification data and all copies and duplicates thereof, returned to him not later than sixty days after the filing of such application provided in the case of a nolle, such nolle shall have occurred thirteen months prior to filing of such application.

Sec. 6. (NEW) All criminal justice agencies which collect, store or disseminate criminal history record information shall:

(a) Screen and have the right to reject for employment, based on good cause, all personnel to be authorized to have direct access to criminal history record information;

(b) Initiate or cause to be initiated administrative action that could result in the transfer or removal of personnel authorized to have direct access to such information when such personnel violate the provisions of these regulations or other security requirements established for the collection, storage or dissemination of criminal history record information;

(c) Provide that direct access to computerized criminal history record information shall be available only to authorized officers or employees of a criminal justice agency, and, as necessary, other authorized personnel essential to the proper operation of a criminal history record information system;

(d) Provide that each employee working with or having access to criminal history record information shall be made familiar with the substance and intent of the provisions in this section;

(e) Whether manual or computer processing is utilized, institute procedures to assure that an individual or agency authorized to have direct access is responsible for the physical security of criminal history record information under its control or in its custody, and for the protection of such information from unauthorized access, disclosure or dissemination. The State Police Bureau of Identification shall institute procedures to protect both its manual and computerized criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind or other natural or man-made disasters;

(f) Where computerized data processing is employed, institute effective and technologically advanced software and hardware designs to prevent unauthorized access to such information and restrict to authorized organizations and personnel only, access to criminal history record information system facilities, systems operating environments, systems documentation, and data file contents while in use or when stored in a media library;

(g) Develop procedures for computer operations which support criminal justice information systems, whether dedicated or shared, to assure that: (1) Criminal history record information is stored by the computer in such a manner that it cannot be modified, destroyed, accessed, changed purged, or overlaid in any fashion by noncriminal justice terminals; (2) operation programs are used that will prohibit inquiry, record updates, or destruction of records, from any terminal other than criminal justice system terminals which are so designated; (3) the destruction of records is limited to designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information; (4) operational programs are used to detect and store for the output of designated criminal justice agency employees all unauthorized attempts to penetrate any criminal history record information system, program or file; (5) the programs specified in subdivisions (2) and (4) of this subsection are known only to criminal justice agency employees responsible for criminal history record information system control or individuals or agencies pursuant to a specific agreement with the criminal justice agency to provide such programs and the programs are kept continuously under maximum security conditions.

Sec. 7. (NEW) (a) A person may challenge the completeness and accuracy of such information by giving written notice of his challenge to the state bureau of identification and to the agency at which he inspected the information, if other than the state police bureau of identification. The notice shall contain a sworn statement that the information in or supporting the challenge is accurate and that the challenge is made in good faith.

(b) Upon receipt of the notice, the state police bureau of identification shall conduct an audit of the part of such person's criminal history record information which is necessary to determine the accuracy of the challenge, and may require any criminal justice agency which was the source of the challenged information to verify such information. Within sixty days after the notice is received, the state bureau of identification shall notify the person in writing of the results of the audit, and of his right to appeal if the challenge is rejected.

Sec. 8. (NEW) (a) All criminal justice agencies that collect, store or disseminate criminal history record information shall institute a process of data collection, entry, storage and systematic audit that will minimize the possibility of recording and storing inaccurate criminal history record information, and shall notify, upon the discovery of any such inaccuracy, all criminal justice agencies known to have received such information.

(b) For the purpose of verifying the completeness and accuracy of criminal history record information collected and maintained by criminal justice information agencies subject to title 28, chapter 1, part 20 of the Code of Federal Regulations, the Connecticut justice commission shall conduct an annual audit of the records maintained by such agencies. Said commission shall provide for a random sample of criminal justice agencies to be audited each year.

(c) Criminal justice agencies subject to such audits shall maintain and retain records that will facilitate such audits, including, but not limited to, the keeping of a log which chronologically records the date non-conviction record information was disclosed, the information disclosed, how or where the information was obtained and the person or criminal justice agency to whom the information was disseminated. Such log shall be maintained for a minimum period of twelve months. It shall not be necessary to log the disclosure of non-conviction record information to any authorized officer or employee within such agency.

Sec. 9. (NEW) The commissioner of state police or on or after January 1, 1979 the commissioner of public safety shall adopt regulations to establish procedures for criminal justice agencies to query the central repository prior to dissemination of any criminal history disposition information to assure that the most up to date dispostion data is being used. Inquiries to the state police bureau of identification shall be made prior to any dissemination except in those cases where time is of the essence and the repository is technically incapable of responding within the necessary time period.

Sec. 10. (NEW) (a) Each person or agency holding criminal history record information shall establish reasonable hours and places of inspection of such information.

(b) Criminal history record information other than non-conviction information, shall be available to the public unless otherwise prescribed by law.

(c) Any person shall, upon satisfactory proof of his identity, be entitled to inspect, for purposes of verification and correction any non-conviction information relating to him and upon his request shall be given a computer printout or photocopy of such information for which a reasonable fee may be charged provided that no erased record may be released except as provided in subsection (j) of section 54-90 of the 1977 court reorganization supplement to the general statutes. Before releasing any exact reproductions of non-conviction information to the subject, the agency holding such information may remove all personal identifying information from it.

(d) Any person may authorize in writing an agency holding non-conviction information pertaining directly to such person to disclose such information to his attorney-at-law. The holding agency shall permit such attorney to inspect and obtain a copy of such information if both his identity and that of his client are satisfactorily established; provided no erased record may be released unless such attorney attests to his client's intention to challenge the accuracy of such record.

(e) Any person who obtains criminal history record information by falsely representing to be the subject of the record shall be guilty of a class D felony.

Sec. 11. (NEW) (a) A criminal justice agency holding non-conviction information may disclose it to persons or agencies not otherwise authorized (1) for the purposes of research, evaluation or statistical analysis or (2) if there is a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to such agreement;

(b) No non-conviction information may be disclosed to such persons or agencies except pursuant to a written agreement between the agency holding it and the persons to whom it is to be disclosed;

(c) The agreement shall specify the information to be disclosed, the persons to whom it is to be disclosed, the purposes for which it is to be used, the precautions to be taken to insure the security and confidentiality of the information and the sanctions for improper disclosure or use;

(d) Persons to whom information is disclosed under the provisions of this section shall not without the subject's prior written consent disclose or publish such information in such manner that it will reveal the identity of such subject.

Sec. 12. (NEW) (a) Non-conviction information disseminated to noncriminal justice agencies shall be used by such agencies only for the purpose for which it was given and shall not be re-disseminated.

(b) No agency or individual shall confirm the existence or nonexistence of non-conviction information to any person or agency that would not be eligible to receive the information itself.

Sec. 13. (NEW) Non-conviction information other than erased information may be disclosed only to:

(a) Criminal justice agencies in this and other states and the federal government; (b) agencies and persons which require such information to implement a statute or executive order that expressly refers to criminal conduct; (c) agencies or persons authorized by a court order, statute or decisional law to receive criminal history record information. Whenever a person or agency receiving a request for non-conviction information is in doubt about the authority of the requesting agency to receive such information, the request shall be referred to the state police bureau of investigation.

Sec. 14. (NEW) (a) Any criminal justice agency may furnish criminal history record information or a no criminal record letter to an individual in conjunction with an application to enter the United States or any foreign nation when the subject of the record (1) certified that the information is needed to complete an application to enter the United States or a foreign nation, and (2) provides proof that he is the subject of the record.

(b) The disseminating agency shall certify that the information released is accurate as of ninety days prior to release and is being disclosed only for the purpose of assisting the subject of the record in gaining entry into the United States or a foreign nation.

Sec. 15. (NEW) The clerk of the court or any person charged with retention and control of erased records by the chief court administrator or any criminal justice agency having information contained in such erased records shall not disclose to anyone the existence of such erased record or information pertaining to any charge erased under any provision of this act, except as provided in this act.

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	11-8501	X	
2. Privacy and Security			
3. Dissemination Regulations	11-4322 11-518 29-10004	X X X	
4. Inspection	11-4322 11-8511 29-10002 Reg. 1.4	X X X	X
5. Challenge	Reg. 1.5		X
6. Judicial Review			
7. Purge: Non-Conviction	11-3904	X	
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record	11-3904	X	
13. Research Access			
14. Accurate & Complete	11-8503	X	
15. Dedicate			
16. Civil Remedy	29-10005	X	
17. Criminal Penalty	11-8520 11-8521	X X	
18. Public Records	29-10001	X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security			
23. Transaction Logs	Reg. 1.5		X
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ	29-10002	X	

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

D0 - 83 2 - 0

BLANK PAGE

Delaware State Police
STATE BUREAU OF IDENTIFICATION
Dover, Delaware

REGULATIONS PROVIDING FOR ADMINISTRATIVE REVIEW, CHALLENGE, AND APPEAL OF THE ACCURACY OF AN INDIVIDUAL'S CRIMINAL HISTORY RECORD.

1.1. PURPOSE - It is the purpose of these rules to provide individuals the right of access and review of criminal history record information maintained about that individual for purposes of insuring the accuracy and completeness of such information; to insure administrative review when the accuracy of such information is challenged; and to provide administrative appeal procedures in conformity with L.E.A.A. regulations, 28 C.F.R. 20.

1.2. AUTHORITY - These rules are issued by the Secretary of Public Safety pursuant to the authority vested in him by 29 Del.C. §8203(7) to establish and promulgate rules and regulations governing the administration and operation of his department.

1.3. DEFINITIONS -

(A) Criminal History Record Information - means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges and any disposition arriving therefrom, including post-judgment, appellate proceedings, as well as corrections, probation, parole and release data. The term does not include:

(i) Identification information such as fingerprint records or photographs to the extent that such information does not indicate involvement of the individual in the criminal justice system.

(ii) Posters, announcements or lists for identifying or apprehending fugitives or wanted persons.

(iii) Original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public, if such records are accessed on a chronological basis.

(iv) Court records of public judicial proceedings compiled chronologically.

(v) Published court opinions or public judicial proceedings.

MICROFILMED FROM BEST AVAILABLE COPY

(b) The State Bureau of Identification shall promptly investigate challenges made pursuant to subsection (a) and shall render a decision upon such challenge within 30 days and notify the challenging individual in writing of its decision and the reasons therefore. If the individuals challenge is substantiated, the State Bureau of Identification shall immediately correct its records and notify the individual involved. The Bureau will also notify other criminal justice agencies not having direct access to C.L.U.E.S. to which that criminal history record information has previously been disseminated of said corrections.

1.6. ADMINISTRATIVE APPEAL -

(a) Any individual after challenging the accuracy and completeness of his criminal history record information file as provided for in Section 1.5 and whose record is not removed, modified, or corrected as he may request, or who is otherwise dissatisfied with the decision or action taken by the State Bureau of Identification may appeal to the Secretary within 30 days of the decision rendered by the State Bureau of Identification.

(b) The individual's request for review shall be made in writing to the Secretary alleging the nature of his appeal.

(c) Failure of the State Bureau of Identification to act within the time prescribed in Section 1.5 shall be deemed a decision adverse to the challenging individual.

1.7. PROCEDURE FOR HEARING APPEAL -

(a) The Secretary shall have 30 days in which to make a determination that there is a prima facie basis for the complaint. Upon such a finding, the Secretary shall have 30 days within which to conduct a hearing.

(b) The complaining individual may appear with counsel, present evidence, examine and cross-examine witnesses. In testimony at this hearing, the technical rules of evidence shall not apply. The complaining individual must show by a preponderance of the evidence, the inaccuracy or incompleteness of the criminal history record being challenged.

(c) A written decision shall be issued by the Secretary within 45 days of the termination of the hearing. Such decision shall include the reasons therefore.

PROPOSED REGULATIONS PROVIDING FOR
ADMINISTRATIVE REVIEW, CHALLENGE,
AND APPEAL OF THE ACCURACY OF AN
INDIVIDUAL'S CRIMINAL HISTORY RECORD.

1.1 PURPOSE - It is the purpose of these rules to provide individuals the right to access and review of criminal history record information maintained about that individual for purposes of insuring the accuracy and completeness of such information; to insure administrative review when the accuracy of such information is challenged; and to provide administrative appeal procedures in conformity with L.E.A.A. regulations, 28 C.F.R. 20.

1.2 AUTHORITY - These rules are issued by the Secretary of Public Safety pursuant to the authority vested in him by 29 Del.C. §8203(7) to establish and promulgate rules and regulations governing the administration and operation of his department.

1.3 DEFINITIONS - (A) Criminal History Record Information - means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges and any disposition arriving thereform, including post-judgment, appellate proceeding as well as corrections, probation, parole and release data. The term does not include:

(i) Identification information such as fingerprint records or photographs to the extent that such information does not indicate involvement of the individual in the criminal justice system.

(ii) Posters, announcements or lists for identifying or apprehending fugitives or wanted persons.

(iii) Original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public, if such records are accessed on a chronological basis.

(iv) Court records of public judicial proceedings compiled chronologically.

(v) Published court opinions or public judicial proceedings..

(vi) Records of traffic offenses maintained by the Division of Motor Vehicles for the purpose of regulating the issuance, suspension, revocation or renewal of operator's licenses.

(vii) Announcements of executive clemency.

(B) Secretary means the Secretary of Public Safety.

1.4 INDIVIDUAL RIGHT OF ACCESS AND REVIEW - Any individual, upon adequate verification of his identity, who desires to review criminal history record information relating to him, or who believes that the information maintained is inaccurate, incomplete or maintained in violation of state or federal law shall be entitled to review such information in accordance with the following procedures:

(a) Verification of such individual's identity shall be effected through submission of name, date of birth, and a set of rolled fingerprints to the State Bureau of Identification.

(b) The request for review may be made at the headquarters of the State Bureau of Identification in Dover or in the case of incarcerated prisoner at any facility maintained by the Department of Corrections.

Such requests shall be accompanied by payment of a fee of $5.00 payable to the State Police and shall be made between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday (excepting state holidays).

1.5 INDIVIDUAL'S RIGHT TO CHALLENGE - (a) If the subject individual, after review of the criminal history record, challenges the completeness or accuracy of such record, he shall submit in writing in support of his challenge the precise nature of the alleged omission or error along with an affirmance or oath that the exceptions are made in good faith, and to the best of the individual's knowledge are believed true.

(b) The State Bureau of Identification shall promptly investigate challenges made pursuant to subsection (a) and shall render a decision upon such challenge and the reason therefore within 30 days, and notify the challenging individual in writing of its decision. If the individual's challenge is substantiated, the State Bureau of Identification shall immediately correct its records and notify the individual involved. The Bureau will also notify other criminal justice agencies not having direct access to C.L.U.E.S. to which that criminal history record information has previously been disseminated of said corrections.

1.6 ADMINISTRATIVE APPEAL - (a) Any individual after challenging the accuracy and completeness of his criminal history record information file as provided for in Section 1.5 and whose record is not

removed, modified, or corrected as he may request, or who is otherwise dissatisfied with the decision or action taken by the State Bureau of Identification may appeal to the Secretary within 30 days of the decision rendered by the State Bureau of Identification.

(b) The individual's request for review shall be made in writing to the Secretary alleging the nature of his appeal.

(c) Failure of the State Bureau of Identification to act within the time prescribed in Section 1.5 shall be deemed a decision adverse to the challenging individual.

1.7 PROCEDURE FOR HEARING APPEAL - (a) The Secretary in each case in which he finds a prima facie basis for complaint shall conduct a hearing.

(b) The complaining individual may appear with counsel, present evidence, examine and cross-examine witnesses. In testimony at this hearing the technical rules of evidence shall not apply. The complaining individual must show by a preponderance of the evidence the inaccuracy or incompleteness of the criminal history record being challenged.

(c) A written decision shall be issued by the Secretary within 60 days of the complaining individual's request for review. Such decision shall include the reasons therefore.

(d) If the record in question is found by the Secretary to be inaccurate, incomplete, or misleading, the State Bureau of Identification shall delete, amend, supplement, or modify the records accordingly and shall immediately notify criminal justice agencies not having direct access to C.L.U.E.S to which the records in question have been disseminated as well as the individual whose records have been corrected of said corrections and shall order such disseminees to conform their records to the corrected data.

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority			
2. Privacy and Security			
3. Dissemination Regulations			
4. Inspection			
5. Challenge			
6. Judicial Review			
7. Purge: Non-Conviction			
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete	4-134	X	
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty			
18. Public Records	4-135	X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security			
23. Transaction Logs			
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

D-SYS-LIB-00-03E8

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	20.201 943.05 943.06	X X X	
2. Privacy and Security	943.08	X	
3. Dissemination Regulations	943.08	X	
4. Inspection	943.08 Reg. 11C-8	X	X
5. Challenge	943.08 Reg. 11C-8	X	
6. Judicial Review			
7. Purge: Non-Conviction			
8. Purge: Conviction	943.08	X	
9. Seal: Non-Conviction	901.33	X	
10. Seal: Conviction	893.14	X	
11. Remove Disqualification	893.14 901.33	X X	
12. Deny CJ Record	893.14 901.33	X X	
13. Research Access			
14. Accurate & Complete	943.05 943.08 947.14 Reg. 11C-4	X X X X	
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty	119.10	X	
18. Public Records	119.01	X	
19. Separate Files	943.08	X	
20. Intelligence Collection	SB1316 943.08	X	X
21. Intelligence Dissemination	SB1316 943.08	X	X
22. Security	943.08	X	
23. Transaction Logs			
24. Train Employees	943.09	X	
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

a p - 1 0 - F

BLANK PAGE

A bill to be entitled

An act relating to public records; adding s. 119.011(3)-(6), Florida Statutes; amending s. 119.07, Florida Statutes, 1978 Supplement, and adding subsections (3) and (4) to said section; defining certain words and phrases; providing that certain criminal intelligence and investigative information and certain information relating to victims, law enforcement personnel, and their families are exempt from disclosure provisions of the public record law; providing for deletion of confidential information from public records produced for inspection; providing for judicial inspection and determination; exempting confidential records received from non-Florida criminal justice agencies; providing authority to charge for costs; providing a study committee; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (3), (4), (5), and (6) are added to section 119.011, Florida Statutes, to read:

119.011 Definitions.--For the purpose of this chapter:

(3) "Criminal intelligence information" means information collected by a criminal justice agency with respect to an identifiable person or groups of persons in an effort to anticipate, prevent, or monitor possible criminal activity.

CODING: Words in ~~struck through~~ type are deletions from existing law, words underlined are additions.

(4) "Criminal investigative information" means information with respect to an identifiable person or group of persons, compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including but not limited to information derived from laboratory tests, reports of investigators or informants, or from any type of surveillance.

(5) The word "active" shall have the following meaning: criminal investigative information shall be considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future. Criminal intelligence information shall be considered active as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities. In addition, criminal intelligence and criminal investigative information shall be considered active while they are directly related to pending prosecutions or appeals. The word "active" shall not apply to information in cases which are barred from prosecution under provisions of s. 775.15 or other statutes of limitation.

(6) "Criminal justice agency" means any law enforcement agency, court, or prosecutor. The term also includes any other agency charged by law with criminal law enforcement duties, or any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution, or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the

time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties.

Section 2. Subsection (2) of section 119.07, Florida Statutes, 1978 Supplement, is amended and subsections (3) and (4) are added to said section to read:

119.07 Inspection and examination of records; exemptions.--

(2)(a) All public records which are presently provided by law to be confidential or which are prohibited from being inspected by the public, whether by general or special law, shall be exempt from the provisions of subsection (1).

(b) All public records referred to in ss. 198.09, 199.222, 228.093, 257.261, 288.075, 624.311(2), 624.319(3) and (4), 657.061(3), 658.10(3), and 794.03 are exempt from the provisions of subsection (1).

(c) Active criminal intelligence information and active criminal investigative information are exempt from the provisions of subsection (1).

(d) Any information revealing the identity of confidential informants or sources is exempt from the provisions of subsection (1).

(e) Any information revealing surveillance techniques or procedures or personnel is exempt from the provisions of subsection (1).

(f) Any information revealing undercover personnel of any criminal justice agency is exempt from the provisions of subsection (1).

(g) Any criminal intelligence information or criminal investigative information including the photograph, name, address or other fact or information which reveals the

identity of the victim of any sexual battery as defined by Chapter 794 or child abuse as defined by Chapter 827 is exempt from the provisions of subsection (1).

(h) Any criminal intelligence information or criminal investigative information which reveals the personal assets of the victim of a crime, other than property stolen or destroyed during the commission of the crime, is exempt from the provisions of subsection (1).

(i) All criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979 is exempt from the provisions of subsection (1).

(j) After December 31, 1930, all criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979 which is not active shall be open to the person to whom the record pertains unless the information is exempted by paragraphs (d), (e), or (f) of this subsection or relates to any other person.

(k) Nothing herein shall be construed to exempt from subsection (1) records made part of a court file and not specifically closed by order of court except as provided in paragraphs (d), (é), and (f) of subsection (2).

(l) The provisions of this section are not intended to expand or limit the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state and a defendant in a criminal prosecution.

(m) ~~(e)~~ Examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure, certification, or employment shall be exempt from the provisions of subsection (1). However, an

CODING: Words in ~~struck through~~ type are deletions from existing law; words underlined are additions.

examinee shall have the right to review his own completed examination.

(n) The home address, telephone number and photograph of law enforcement personnel; the home address, telephone number, photograph and place of employment of the spouse and children of law enforcement personnel; and the names and locations of schools attended by the children of law enforcement personnel are exempt from the provisions of subsection (1).

(3) "Criminal intelligence information" and "criminal investigative information" shall not include the time, date, location, and nature of a reported crime, the name, sex, age, and address of a person arrested or the victim of a crime except as provided in subsection (2)(g), the time, date, and location of the incident and the arrest, the crime charged, all documents given or required by law or agency rule to be given to the person arrested, and information and indictments except as provided in s. 905.26.

(4) Any person who has custody of public records and who asserts that an exemption provided in subsection (2) or in general or special law applies to a particular record shall delete or excise from the record only that portion of the record for which an exemption is asserted and shall produce for inspection and examination the remainder of such record. In any action in which an exemption is asserted pursuant to paragraphs (d), (e), and (f) of subsection (2), the record or records shall be submitted in camera to the court for a de novo inspection. In the case of an exemption asserted pursuant to paragraph (c) of subsection (2) an in camera inspection shall be discretionary with the court. If the

court finds no basis for the assertion of the exemption it shall order the records to be disclosed.

Section 3. Whenever criminal intelligence information or criminal investigative information held by a non-Florida criminal justice agency is available to a Florida criminal justice agency only on a confidential or similarly restricted basis, the Florida criminal justice agency may obtain and use such information in accordance with the conditions imposed by the providing agency.

Section 4. In the case of records produced under this act, when the nature or volume of records is such as to require extensive clerical or supervisory assistance by personnel of the agency involved, the agency may charge, in addition to the actual cost of duplication, a reasonable charge, approved by the Department of Administration, for the provision of such clerical or supervisory personnel.

Section 5. In the case of inactive records received by a criminal justice agency prior to January 25, 1979, provisions for their examination by certain persons and their exemption from s. 119.07(1) shall be the subject of study for a select joint committee, the number and appointment of the members to be determined by the Speaker and President of the House and Senate, which committee shall report findings and recommendations to the Legislature prior to January 1, 1980.

Section 6. This act shall take effect upon becoming a law; however, the provisions of paragraph (j) of subsection (2) of section 119.07, Florida Statutes, stands repealed December 31, 1980.

RULES

OF

THE FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

CHAPTER 11C-4

CRIME INFORMATION BUREAU

11C-4.01 Bureau Chief. The Crime Information Bureau is supervised by a Bureau Chief under the direction of the Division Director, Executive Director and the Governor and Florida Cabinet.
General Authority: 120.53, 943.03, 943.05, F S. Law Implemented: 20.04, 20.05, 20.201, 120.53, 943.03, 943.05, F S. Effective Date: November 28, 1975

RULES

OF

THE FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

CHAPTER 11C-4

CRIME INFORMATION BUREAU

11C-4.02 Duties of Bureau.

(1) The Crime Information Bureau maintains criminal histories as to non-juvenile offenders in Florida.

(2) It serves as a screening point for dissemination of criminal history record information contained in the files of the Florida Crime Information Center and the National Crime Information Center.

(3) It expunges or seals individual records of criminal history pursuant to federal and state law and regulations and carries out orders of court in this regard.

(4) It publishes an Identification Manual to assist and guide local agencies in the taking and proper submission of fingerprint cards.

(5) When authorized by law and federal regulation, it assists licensing and regulatory agencies in the screening of applicants for licenses, permits, and the like.
General Authority: 120.53, 943.03, 943.05, F S., Ch 1, Title 28, U.S.C. and C.F.R. Law Implemented: 20.201, 120.53, 943.03, 943.05, F S., Ch 1, Title 28, U.S.C. and C.F.R. Effective Date: November 28,

MICROFILMED FROM BEST AVAILABLE COPY

RULES

OF

THE FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

CHAPTER 11C-4

CRIME INFORMATION BUREAU; CRIMINAL HISTORY RECORDS;

FINGERPRINTING AND REPORTS

11C-4.03 Arrest Fingerprint Card Submission. In order for the Department to properly carry out those mandates in Section 943.05, Florida Statutes, pertaining to the establishment and maintenance of criminal histories based on positive identification using fingerprint comparison, all law enforcement agencies of the State shall take the following action on all misdemeanor and felony arrests made:

(1) Complete at the time of arrest, as outlined in the Department's Identification Manual and on forms provided by the Department, a criminal arrest fingerprint card.

(2) Submit on a daily basis all completed fingerprint cards to the Department, attention: Crime Information Bureau, using procedures further detailed in the "Single Fingerprint Card Submission Program", in the Department's Identification Manual.

(3) The only exceptions to the foregoing requirements shall be that charges regarding drunkenness and minor traffic offenses as well as charges made the subject of a field citation under statutes such as section 901.28, Florida Statutes, need not be submitted to the Department unless, of course, the arresting agency requires a criminal history check or major charges are associated with such charges.

(4) Charges regarding "minor traffic offenses" do not include:

(a) Driving while intoxicated;

RULES

OF

THE FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

CHAPTER 11C-4

CRIME INFORMATION BUREAU; CRIMINAL HISTORY RECORDS;

FINGERPRINTING AND REPORTS

(b) Leaving the scene of an accident;

(c) Fleeing or attempting to elude a police officer;

(d) Making a false accident report;

(e) Reckless driving;

(f) Other offenses against the traffic and motor vehicle laws which have not been decriminalized.

General Authority: 943.03, 943.05, F.S. Law Implemented: 943.05, F.S.

RULES

OF

THE FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

CHAPTER 11C-4

CRIME INFORMATION BUREAU; CRIMINAL HISTORY RECORDS;

FINGERPRINTING AND REPORTS

11C-4.04 Identification Manual

(1) The Department publishes an Identification Manual to assist and guide agencies in the taking and proper submission of fingerprint cards.

(2) The criminal justice community shall be provided with updates and/or changes to the Identification Manual by the Department as they are needed.

(3) The Identification Manual, containing all forms referred to in this rule chapter, is on file with the Florida Department of State and is, accordingly, incorporated herein by reference.

General Authority: 120.53, 943.03, 943.05, F.S. Law Implemented:

MICROFILMED FROM BEST AVAILABLE COPY

RULES

OF

THE FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

CHAPTER 11C-4

CRIME INFORMATION BUREAU; CRIMINAL HISTORY RECORDS;

FINGERPRINTING AND REPORTS

11C-4.05 Deceased Notification Submission.

(1) The cognizant law enforcement agency shall submit a set of fingerprints on unknown deceased individuals to the Department for the purpose of positive identification.

(2) If agencies are unable to print the deceased or furnish a previous set of prints, they shall submit to the Department the F.B.I. R-88 Death Notification form, furnishing as much information on the deceased as possible.

General Authority: 943.03, 943.05, F.S. Law Implemented: 943.05, F.S.

RULES

OF

THE FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

CHAPTER 11C-4

CRIME INFORMATION BUREAU; CRIMINAL HISTORY RECORDS;

FINGERPRINTING AND REPORTS

11C-4.06 Final Disposition Reporting.

(1) In order for the Department to properly carry out those mandates set forth in §943.05, F.S., Ch. 1, Title 28, Part 20, C.F.R., and 42 U.S.C. 3771 in regard to the establishment and maintenance of current, complete, and accurate criminal histories, agencies, offices and officers in the Florida criminal justice community shall, to the maximum extent feasible, submit disposition data on criminal arrests, pretrial dispositions, trials, sentencing, confinement, parole and probation.

(2) The arresting agency shall initiate the disposition report and supply all fields of identifying and arrest information requested on the top half of the form provided by the Department for this purpose. The impressions of the right four fingers shall be obtained and placed in the bottom right corner of the report. These actions shall be accomplished simultaneously with the taking of fingerprints following an arrest.

(3) Other agencies, officers and offices shall, to the maximum extent feasible, submit disposition data to the Department for each arrest as follows:

(a) If the case is not forwarded to the prosecutor for action, the arresting agency shall complete the final disposition report.

(b) If the case is taken by a prosecuting authority, the arresting agency shall turn over the disposition report form to the prosecutor. Thereafter, the form will be executed by the prosecuting authority.

MICROFILMED FROM BEST AVAILABLE COPY

RULES

OF

THE FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

CHAPTER 11C-4

CRIME INFORMATION BUREAU; CRIMINAL HISTORY RECORDS;

FINGERPRINTING AND REPORTS

(c) Subsequent disposition reports shall be initiated by appropriate authorities to augment the record in regard to correctional, parole and probation information.

(4) Although interim transactions (i.e. turned over to, held for, pending) should be indicated in the designated area of the fingerprint card but not made the subject of a disposition report, it is essential that final disposition reports, as more fully described in Ch. 1, Title 28, C.F.R. 20.3(e), be submitted within 90 days after the final disposition occurs.

(5) If within 180 days after an arrest no disposition report to the Department has been made, the Department shall notify the arresting agency and request disposition report. The arresting agency shall thereafter provide such disposition report within 30 days.

General Authority: [illegible], 943.05, F.S., Ch. 1, Title 28, Part 20 C.F.R. Law Implemented: 943.05, F.S., Ch. 1, Title 28, Part 20, Sections 20.21 and 20.37, C.F.R., 42 U.S.C. 3771(b).

RULES

OF

THE FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

CHAPTER 11C-5

CRIMINAL JUSTICE INFORMATION SYSTEMS COUNCIL

11C-5.01 Creation, Membership, Terms, Compensation, etc.

(1) The Criminal Justice Information Systems Council is created within the Department of Criminal Law Enforcement.

(2) The membership is comprised of the Attorney General or a designated assistant, the Chairman of the Parole and Probation Commission, the State Courts Administrator, and six other members appointed by the Governor, consisting of two sheriffs, two police chiefs, one public defender, and one state attorney.

(3) The terms and compensation of the members, the method of electing a chairman and other officers, etc. are described with particularity in § 943.06, Florida Statutes.

General Authority: 120.53, 943.03, 943.05, F S. Law Implemented: 120.53, 943.06, F S. Effective Date: November 28, 1975

MICROFILMED FROM BEST AVAILABLE COPY

RULES

OF

THE FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

CHAPTER 11C-5

CRIMINAL JUSTICE INFORMATION SYSTEMS COUNCIL

11C-5.02 Powers and Duties of Council. The Council shall, develop and recommend operating policies and procedures relating to:

(1) The exchange of criminal justice information and criminal justice intelligence information and the operation of the criminal justice information and criminal justice intelligence information systems, both interstate and intrastate;

(2) The installation of criminal justice information systems and criminal justice intelligence systems and the exchange of information by such systems and with similar systems and criminal justice agencies;

(3) The physical security of the system, to prevent unauthorized disclosure of information and to insure the accuracy and currency of such information in the system;

(4) The purging or sealing of criminal justice information upon order of court of competent jurisdiction or when required by law;

(5) The dissemination of criminal justice information to persons or agencies outside the criminal justice community if authorized by law;

(6) The challenge and correction of criminal justice information by individuals;

(7) Such other areas as may relate to criminal justice information and intelligence information collection and dissemination.

General Authority: 120.53, 943.03, 943.05, F S. Law Implemented: 120.53, 943.05, 943.06, F S. Effective Date: November 28, 1975

RULES

OF

THE FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

CHAPTER 11C-6

CRIMINAL HISTORY RECORDS DISSEMINATION POLICY

11C-6.01 Posture of Department and other agencies.

(1) The Department receives funding from the Law Enforcement Assistance Administration of the U. S. Department of Justice and is therefore subject to federal regulations contained in Ch. 1, Title 28, Subpart 20B, C.F.R.

(2) The Department utilizes the services of U. S. Department of Justice criminal history record information systems and therefore must abide by and demand adherence to federal dissemination policy when using such services. The federal policy is contained in Ch. 1, Title 28, Subpart 20C, C.F.R.

(3) Most criminal justice agencies and some non-criminal justice agencies in Florida are themselves similarly situated. Moreover, any person or agency receiving criminal justice information directly from this Department or indirectly through any of these other agencies is subject to Ch. 1, Title 28, Subpart 20B, C.F.R., and will additionally be subject to Ch. 1, Title 28, Subpart 20C, if such information was derived from the criminal justice information systems of the United States Department of Justice.

General Authority: 120.53, 943.03, F.S., Ch. 1, Title 28, Part 20, C.F.R. Law Implemented: 120.53, 943.05, F.S., Ch. 1, Title 28, Part 20, C.F.R.

MICROFILMED FROM BEST AVAILABLE COPY

RULES

OF

THE FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

CHAPTER 11C-6

CRIMINAL HISTORY RECORDS DISSEMINATION POLICY

11C-6.02 Present Policy.

(1) Pending legislative or judicial direction to the contrary and to the maximum extent that it may act consistent with Chapter 119, Florida Statutes, the Department adopts by reference the definitions contained in Ch. 1, Title 28, Subpart 20A, C.F.R., and will make and hereby authorizes disseminations to the fullest extent authorized under Ch. 1, Title 28, Subpart 20B and Ch. 1, Title 28, Subpart 20C, C.F.R., also incorporated herein by reference.

(2) Ch. 1, Title 28, Part 20, C.F.R., was published in the Federal Register, Vol. 40, No. 98, dated Tuesday, May 20, 1975. Significant amendments thereto were published in the Federal Register, Vol. 41, No. 55, dated Friday, March 19, 1976. These regulations have been filed with The Florida Department of State.

(3) In order for the Department to respond to requests for Florida criminal history information, the person or entity who wishes to review or secure such information shall provide to the Department the subject's full name and approximate age or date of birth. If available, the social security number, completed fingerprint card, and any other identifiers shall be provided.

General Authority: 943.03, 943.05, F.S. Law Implemented: 943.05, 943.06, F.S., Ch. 1, Title 28, Part 20, Sections 20.20, 20.21 and 20.23, C.F.R.

RULES

OF

THE FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

CHAPTER 11C-6

CRIMINAL HISTORY RECORDS DISSEMINATION POLICY

11C-6.03 System Security and Public Access—

(1) Not all criminal history records contained in or available through the record systems of the Florida Department of Criminal Law Enforcement are available to the public under the Florida Public Records Law. (e.g. records sealed under §893.14, F. S., or derived from the Federal Bureau of Investigation criminal history record systems). And because federal and state privacy and security laws, rules and regulations preclude members of the public from personally making searches of the criminal history systems and records of the department, searches for criminal history records shall be conducted only by personnel of the department and those criminal justice agencies having access thereto through secure remote terminals.

(2) Personnel conducting such searches shall insure that copies of records made available to the public contain no information deemed confidential by law.

(3) Depending upon whether the request for a record check is in writing or accompanied by a properly executed fingerprint card and upon the results of the record check, the letter of request, fingerprint card, and/or record will be returned bearing one of the following notations:

(a) "Subject identical with subject of attached Florida Department of Criminal Law Enforcement record number _____."

(b) "Based on the information provided, subject of attached Florida Department of Criminal Law Enforcement record number(s)_____, may be the

MICROFILMED FROM BEST AVAILABLE COPY

RULES

OF

THE FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

CHAPTER 11C-6

CRIMINAL HISTORY RECORDS DISSEMINATION POLICY

same as your subject."

(c) "Because the information provided is inadequate, the subject inquired upon cannot be associated with any individual having a record in the criminal history record systems of the Florida Department of Criminal Law Enforcement."

(d) "Based upon the information provided, you are advised that the subject has no criminal history record in the systems of the Florida Department of Criminal Law Enforcement."

(4) Copies of records made available to the public pursuant to the Florida Public Records Law shall be prominently annotated to indicate whether the record is based upon positive identification using fingerprints and shall be signed and dated by the processing technician.

(5) The public is advised that criminal history record checks conducted without the use of fingerprint identification procedures are unreliable. Moreover, the record provided may be inaccurate or incomplete due to the failure of an agency to make a report or because portions of the record are sealed, have been expunged, or are otherwise unavailable except to certain law enforcement or criminal justice agencies under state or federal law.

Specific Authority: 120.53(1), 943.03(3), 943.05(2), F. S. Law Implemented: 119.07, 120.53(1), 943.05(2), 943.08(3), 943.08(5), 943.08(7), F. S.; Ch. 1, Title 28, Section 20.21(f), C.F.R.

RULES

OF

THE FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

CHAPTER 11C-6

CRIMINAL HISTORY RECORDS DISSEMINATION POLICY

11C-6.04 Procedures for Requesting Criminal History Records--

(1) Requests for Florida criminal history records contained in the systems of the Florida Department of Criminal Law Enforcement are to be directed to the following address:

Florida Department of Criminal Law Enforcement
Post Office Box 1489, Tallahassee, Florida 32302
Attn: Crime Information Bureau

(2) The request will be subject to processing in the following declining order of priorities:

(a) Requests from law enforcement and criminal justice agencies for criminal justice purposes, including criminal justice agency applicant processing;

(b) Requests for a personal record review pursuant to 11C-8.01, FAC;

(c) Requests from the Judicial Qualifications Commission, the Governor, and the President of the Senate relating to the appointment of officers;

(d) Requests from non-criminal justice agencies having specific statutory authority to receive this information;

(e) Requests from other governmental agencies

MICROFILMED FROM BEST AVAILABLE COPY

RULES

OF

THE FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

CHAPTER 11C-6

relying upon the Public Records Law (Ch. 119, F.S.);

(f) Requests from private individuals relying upon the Public Records law.

(3) There shall be no charge for producing records under subsections 11C-6.04(2)(a) through 11C-6.04(2)(c). A duplicating fee of $2. shall be charged for each subject inquired upon under subsections 11C-6.04(2)(d) through 11C-6.04(2)(f) unless the Executive Director of the Department determines that dissemination of the record in the premises would be in the interest of law enforcement or criminal justice or if the fee is otherwise legally waiverable.

(4) The duplication fee of $2. shall not be deemed tendered by a non-governmental agency until actual receipt and acceptance thereof by the department. Personal checks will not be accepted.

Specific Authority: 120.53(1), 943.03(3), 943.05(2), F.S.
Law Implemented: 112.071, 119.07, 943.03(5)(a), 943.05(2), 943.08(5), 943.08(7), F.S.; 524(b) Pub. L. 93-83; Ch. 1, Title 28, Section 20.21(g)(1), C.F.R.; Art. V, Section 12(e), Art. IV, Section 1(a), Fla. Const.

FLORIDA

RULES

OF

THE FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

CHAPTER 11C-7

CRIMINAL HISTORY RECORDS; EXPUNCTION POLICY AND PROCEDURES

11C-7.01 Policy on Statutory and Court-Ordered Expunction.

(1) Pending judicial or legislative clarification of the matter, the Department has the view that §893.14, F.S. (1973), dealing particularly with expunction and sealing of the arrest records of certain first offenders for drug possession, is the controlling statute as to that type of offense notwithstanding the subsequent enactment of §901.33, F.S. (1974 Supp.), dealing generally with the expunction and sealing of criminal records of first offenders.

(2) Except when it appears to the Department that the court ordering a statutory expunction and sealing has not been fully informed as to the prior criminal record of an individual as it might affect his eligibility for proper entry of such an order, it shall honor and comply with the letter of orders of courts of competent jurisdiction to expunge and/or seal criminal history record information. When it appears that the court ordering a statutory expunction and sealing has not been fully informed as to the prior criminal record of an individual, the Department shall so inform the court or prosecuting authority and request modification or clarification of such order.

3) When an order to expunge, remove, or destroy a record is silent as to the statutory authority relied upon and otherwise gives no clear indication as to the intention of the court to have the record sealed under one of the foregoing statutes, the Department will presume that the order is based on the extraordinary equitable powers of the court rather than either of the foregoing statutes, and will completely destroy the indicated record and all notations relating thereto traceable to the individual in the criminal history record information system.

MICROFILMED FROM BEST AVAILABLE COPY

RULES

OF

THE FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

CHAPTER 11C-7

CRIMINAL HISTORY RECORDS; EXPUNCTION POLICY AND PROCEDURES

11C-7.02 Procedure on Court-Ordered Expunctions.

(1) The order of the court as to an expunction of arrest records should specify the agencies to which it applies, including this Department, and should be directed to the law enforcement agency which made the arrest and forwarded the arrest information to the Department.

(2) Upon receipt of any order to expunge a criminal history record the arresting authority shall:

(a) Make a positive association between the individual and arrest covered by the order and the arrest record generated by it;

(b) Forward a certified copy of the order along with a letter of transmittal to the Department.

(3) The letter of transmittal shall make specific reference to identifying information, including:

(a) Date of arrest;

(b) Arrest number and original charges.

(4) The letter of transmittal shall be signed by the chief police officer of the agency or a person designated in accordance with rule 11C-7.03(4), F.A.C.

(5) Orders of courts of non-Florida jurisdictions, when certified by the counterpart of the Department in such other jurisdiction, shall be processed as requests for administrative expunction.

General Authority: 943.03, 943.05, 943.08, F.S. Law Implemented: 943.03, 943.05, 943.08, F.S., Ch. 1, Title 28, Part 20, Section 20.21,

RULES

OF

THE FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

CHAPTER 11C-7

CRIMINAL HISTORY RECORDS; EXPUNCTION POLICY AND PROCEDURES

11C-7.04 Federal Criminal History Records. Unless otherwise directed, all requests or orders to expunge or seal criminal history records shall be deemed a request or order to initiate the expunction of such information from the Federal Bureau of Investigation's National Crime Information Center and Identification Division and to seek the expunction of such information by such other jurisdictions to which it may have been forwarded.

General Authority: 943.03, 943.05, 943.08, F.S., Ch. 1, Title 28, Part 20, C.F.R. Law Implemented: 943.05, 943.08, F.S., Ch. 1, Title 28, Part 20, C.F.R.

MICROFILMED FROM BEST AVAILABLE COPY

RULES

OF

THE FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

CHAPTER 11C-8

CRIMINAL HISTORY RECORD; REVIEW AND CORRECTION

11C-8.01 Review Procedures.

(1) Any individual wishing to review his criminal history record must submit a request in writing to a local law enforcement agency and should specifically indicate whether a multistate (FBI/NCIC) check is desired.

(2) The individual must then be fingerprinted by a local law enforcement agency for identification purposes. The fingerprint card will contain all required identifying data and a conspicuous notation that the card is submitted in order to provide positive identification for a personal record review.

(3) Requests and completed fingerprint cards received by local law enforcement agencies will then be mailed by the local law enforcement agency to the Department.

(4) The fingerprint card will be processed by the Department and if a positive fingerprint identification is established against an existing criminal history record, a single copy of the record, the submitted fingerprint card, and the original letter of request will be returned to the local law enforcement agency. If no arrest record is found in the Florida Crime Information Center/Computerized Criminal History System, the fingerprint card and the letter of request will be so stamped on the reverse side and will be returned to the local law enforcement agency forwarding same.

(5) The Department will mail a letter to the requesting individual advising him that a copy of his criminal history record, if any, has been mailed to the local law enforcement agency.

RULES

OF

THE FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

CHAPTER 11C-8

CRIMINAL HISTORY RECORD; REVIEW AND CORRECTION

(6) It will then be the responsibility of the individual requesting said record to personally call for such record at that local law enforcement agency. It will be the responsibility of the local law enforcement agency to determine that the person reviewing the criminal history record is the same person that was fingerprinted by that agency. A statement will be placed on each criminal history record or fingerprint card returned by the Department which states, "Released to (subject's name) Date (date released) by (releasing agency)". This statement must be completed by the local law enforcement agency that delivers the record to the individual.

(7) If after reviewing his record, the individual feels that the record is incorrect or incomplete, it is his responsibility to contact the agency submitting that part of the record in question. It then will be the responsibility of that agency to determine the merit of the assertion, to make any and all corrections or deletions that may be required, and to notify the Department of any corrections or deletions.

(8) If, after the foregoing steps have been taken, the agency submitting the record in question and the individual cannot resolve their differences, the agency shall subject itself to such further administrative or judicial proceedings as are indicated.

REPRODUCED FROM BEST AVAILABLE COPY

RULES

OF

THE FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

CHAPTER 11C-8

CRIMINAL HISTORY RECORD; REVIEW AND CORRECTION

(9) Persons not wishing to deal with a local law enforcement agency may secure a copy of their criminal record, if any, by presenting themselves at the Florida Crime Information Center (FCIC) Building, 408 North Adams Street, Tallahassee, Florida. Fingerprinting and a written request are nonetheless required and two appearances are necessary to allow for the processing of the request using positive identification procedures.

(10) As used in this rule, "local law enforcement agency" shall be deemed to include all agencies responsible for the custody of prisoners.

General Authority: 943.03, 943.05, 943.08, F.S., Ch. 1, Title 28, Part 20, C.F.R. Law Implemented: 943.05, 943.08, F.S., Ch. 1, Title 28, Part 20, Sections 20.21(g) and 20.34, C.F.R., 42 U.S.C. 3771(b).

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	92A-3002 92A-3005 SB439,92A-3003	X X	X
2. Privacy and Security	92A-3005	X	
3. Dissemination Regulations	92A-3003 Reg. 140-2.01 SB439,92A-3003	X X	X
4. Inspection	92A-3003 92A-3006 Reg. 140-2.10	X X X	
5. Challenge	92A-3006 Reg. 140-1-.06	X	
6. Judicial Review	92A-3006	X	
7. Purge: Non-Conviction			
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete	27-2202 92A-302 92A-2501 92A-3004 Reg. 140-2.03	X X X X X	
15. Dedicate	92A-3003	X	
16. Civil Remedy	92A-3007	X	
17. Criminal Penalty	92A-9939	X	
18. Public Records	27-220 40-2701	X X	
19. Separate Files	Reg. 140-2.02	X	
20. Intelligence Collection	92A-3005	X	
21. Intelligence Dissemination	Reg. 140-2.02	X	
22. Security	92A-3003 Reg. 140-2.02	X X	
23. Transaction Logs	92A-3003 Reg. 140-2.02	X X	
24. Train Employees	92A-3003 Reg. 142-2.09	X X	
25. List Systems			
26. F.O.I. Including CJ	40-2701	X	
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

GOO1-9-a

BLANK PAGE

CHAPTER 92A-30. GEORGIA CRIME INFORMATION CENTER

Sec.
92A-3003 Functions

92A-3003 Functions

The Georgia Crime Information Center shall:

(a) Obtain and file fingerprints, descriptions, photographs, and any other pertinent identifying data on persons who:

(1) have been or are hereafter arrested or taken into custody in this State:

(i) for an offense which is a felony;

(ii) for an offense which is a misdemeanor or a violation of an ordinance involving burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, dangerous drugs, marijuana, narcotics, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, or worthless checks;

(iii) for an offense charged as disorderly conduct but which relates to an act connected with one or more of the offenses under subparagraph (ii);

(iv) as a fugitive from justice;

(v) for any other offense designated by the Attorney General; or

(2) are or become well-known or habitual offenders, or

(3) are currently or become confined to any prison, penitentiary or other penal institution, or

(4) are unidentified human corpses found in State.

(b) Compare all fingerprint and other identifying data received with those already on file and whether or not a criminal record is found for that person, at once inform the requesting agency or arresting officer of such facts as may be disseminated consistent with applicable security and privacy laws and regulations. A log shall be maintained of all disseminations made of each individual criminal history including at least the date and recipient of such information.

(c) Provide a uniform crime reporting system for the periodic collection, analysis, and reporting of crimes reported to and otherwise processed by any and all law enforcement agencies within the State as defined and provided for elsewhere in this Chapter.

(d) Develop, operate and maintain an information system which will

support the collection, storage, retrieval, and dissemination of all crime and offender data described in this Chapter consistent with those principles of scope, security and responsiveness prescribed by this Chapter.

(e) Cooperate with all criminal justice agencies within the State in providing those forms, procedures, standards and related training assistance necessary for the uniform operation of the statewide GCIC.

(f) Offer assistance and, when practicable, instruction to all local law enforcement agencies in establishing efficient local records systems.

(g) Compile statistics on the nature and extent of crime in Georgia and compile other data related to planning for and operating criminal justice agencies, provided that such statistics do not identify persons. GCIC will make available all such statistical information obtained to the Governor, the General Assembly, and any other governmental agencies whose primary responsibilities include the planning, development, or execution of crime reduction programs. Access to such information by the latter governmental agencies will be on an individual written request basis wherein must be demonstrated a need to know, the intent of any analyses, dissemination of such analyses, and any security provisions deemed necessary by GCIC.

(h) Periodically publish statistics no less frequently than annually that do not identify persons, agencies, corporations or other legal entities and report such information to the Governor, the General Assembly, the State Crime Commission, State and local criminal justice agencies and the general public. Such information shall accurately reflect the level and nature of crime in this State and the operations in general of the different types of agencies within the criminal justice system.

(i) Make available upon request, to all local and State criminal justice agencies, to all Federal criminal justice agencies and criminal justice agencies in other States any information in the files of the GCIC which will aid these agencies in the performance of their official duties. For this purpose the GCIC shall operate on a 24-hour basis, seven days a week. Such information, when authorized by the council, may also be made available to any other agency of this State or political subdivision of this State, and to any other Federal agency, upon assurance by the agency concerned that the information is to be used for official purposes only in the prevention or detection of crime or the apprehension of criminal offenders.

(j) Cooperate with other agencies of this State, the crime information agencies of other States, and the Uniform Crime Reports and National Crime Information Center systems of the F.B.I. in developing and conducting an interstate, National and international system of criminal identification, records and statistics.

(k) Provide the administrative mechanisms and procedures necessary to respond to those individuals who file requests to view their own records as provided for elsewhere in this Chapter and to cooperate in the correction of the central GCIC records and those of contributing agencies when their accuracy has been successfully challenged either through the related contributing agencies or by court order issued on behalf of the individual.

(l) Institute the necessary measures in the design, implementation, and continued operation of the criminal justice information system to ensure the privacy and security of the system. This will include establishing complete control over use and access of the system and restricting its integral resources and facilities to those either possessed or procured and controlled by criminal justice agencies as defined in this Chapter. Such security measures must meet standards to be set by the GCIC and its Advisory Council as well as those set by the nationally operated systems for interstate sharing of information.

(m) Provide availability by means of data processing, to files listing motor vehicle drivers' license numbers, motor vehicle registration numbers, wanted and stolen motor vehicles, outstanding warrants, identifiable stolen property, and such other files as may be of general assistance to law enforcement agencies.

(n) For the purpose of enforcing the provisions of this Chapter, GCIC shall maintain a field coordination and support unit whose agency shall have all the power conferred by law upon any peace officer of this State.

(o) Make records of adjudications of guilt available to private persons and businesses as follows:

(1) Make available to employers or their designated representatives, for the purpose of making employment and job assignment decisions, records of employees or prospective employees whose duties involve or may involve:

(A) Working in or near private dwellings without immediate supervision;

(B) Custody or control over or access to cash or valuable items;

(C) Knowledge of or access to secret processes, trade secrets or other confidential business information;

(D) Insuring the security or safety of other employees, customers or property of the employer.

(2) Make available to appropriate personnel, or representatives designated by the owner or manager, of any business or commercial establishment records of persons apprehended for or suspected of a specific criminal act or acts of which such establishment, or an employee of such establishment in the course of his employment, is a victim.

(3) GCIC shall charge fees for disseminating records pursuant to this Section which will raise an amount of revenue which approximates nearly as practicable, the direct and indirect costs to the State of providing such disseminations.

(4) Information disseminated pursuant to paragraph (1) above shall be available only to persons involved in the hiring, background investigation or job assignment of the person whose record is disseminated. Information disseminated pursuant to paragraph (2) above shall be available only to persons involved in deciding whether or not to prefer charges against the person whose record is disseminated or persons engaged in the investigation of such specific criminal act or acts. Any dissemination of any information obtained pursuant to this subsection to any person not specifically authorized hereby to receive it or any use of any informa-

obtained pursuant to this subsection for any purpose other than the purpose for which it was obtained shall constitute a violation of section 92A-9939.

(5) In the event that a decision is made adverse to a person whose record was obtained pursuant to this subsection, the person will be informed by the business or person making such adverse decision of all information pertinent to this decision. This shall include information that a record was obtained from GCIC, the specific contents of such record and the effect that such record had upon the decision.

(6) Neither GCIC, its employees, nor any other agency or employee of the State shall be responsible for the accuracy of information or have any liability for defamation, invasion of privacy, negligence or any other claim in connection with any dissemination of information pursuant to this subsection.

(7) GCIC shall disseminate records pursuant to paragraph (1) only upon positive identification by fingerprint comparison. GCIC shall disseminate records pursuant to paragraph (2) on fingerprint identification and when fingerprints are unavailable or time prohibits the use of fingerprints for identification, identification may be made through the use of the name, date of birth, sex and race of the person with appropriate qualifications. Local criminal justice agencies may disseminate records of adjudication of guilt, without fingerprint comparison or prior contract with GCIC, to the same individuals and for the same purposes as described in paragraphs (1) and (2) above, and may charge fees as needed to reimburse such agency for any costs of such checking.

(8) The GCIC Council is hereby empowered to adopt rules, regulations and forms to implement this subsection and provide for security and privacy of information disseminated pursuant hereto giving first priority to the criminal justice requirements of the Chapter. Such rules may include requirements for users, audits of users and such other procedures as may be necessary to prevent unauthorized use of criminal history record information and to insure compliance with Federal regulations.

The GCIC Council may adopt rules authorizing local law enforcement agencies to act as an agent for GCIC in receiving requests for information and disseminating information pursuant to such requests.

(p) Make records of adjudications of guilt available to any other agency of this State or political subdivision of this State or to any Federal agency as follows:

(1) Make available to public agencies, political subdivisions, authorities and instrumentalities, State or Federal, or their designated representatives, for the purpose of making employment and job assignment decisions, records of employees or prospective employees whose duties involve or may involve:

(A) working in or near private dwellings or public buildings and facilities without immediate supervision;

(B) custody or control over or access to cash or valuable items;

(C) knowledge of or access to secret processes or confidential governmental information;

(D) insuring the security or safety of other employees, the general public

or property of the State or Federal political subdivisions, authorities and instrumentalities.

(2) Make available to appropriate counsel, or representatives designated by the State, a political subdivision, authority or instrumentality thereof, or to any Federal agency, records of persons apprehended for or suspected of a specific criminal act or acts of which such State, political subdivision, authority or instrumentality thereof, or Federal agency, or an employee thereof or member of the general public at such institution or agency in the course of his employment or by reason of his presence at such institution or agency is a victim.

(3) The Georgia Crime Information Center may charge fees for disseminating records pursuant to this section which will raise an amount of revenue which approximates, as nearly as practicable, the direct and indirect costs to the State of providing such disseminations.

(4) Any dissemination of any information obtained pursuant to this subsection to any person not specifically authorized hereby to receive it or any use of any information obtained pursuant to this subsection for any purpose other than the purpose for which it was obtained shall constitute a violation of section 92A-9939.

(A) Information disseminated pursuant to paragraph (1) above shall be available only to persons involved in the hiring, background investigation or job assignment of the person whose record is disseminated. In the event that a decision is made adverse to a person whose record was obtained pursuant to this subsection, the person will be informed by the State agency, political subdivision or Federal agency or person making such adverse decision of all information pertinent to this decision. This shall include information that a record was obtained from the Georgia Crime Information Center, the specific contents of such record and the effect that such records had upon the decision.

(B) Information disseminated pursuant to paragraph (2) above shall be available only to persons involved in deciding whether or not to prefer charges against the person whose record is disseminated or persons engaged in the investigation of such specific criminal act or acts.

(5) Neither the Georgia Crime Information Center, its employees nor any other agency or employee of the State shall be responsible for the accuracy of information or have any liability for defamation, invasion of privacy, negligence or any other claim in connection with any dissemination of information pursuant to this subsection.

(6) The Georgia Crime Information Center shall disseminate records pursuant to paragraph (1) only upon positive identification by fingerprint comparison. The Georgia Crime Information Center shall disseminate records pursuant to paragraph (2) on fingerprint identification and, when fingerprints are unavailable or time prohibits the use of fingerprints for identification, identification may be made through the use of the name, date of birth, sex and race of the person with appropriate qualification. Local criminal justice agencies may disseminate records of adjudication of guilt, without fingerprint comparison or prior contact with the Georgia Crime Information Center, to the same individuals and for the same

MICROFILMED FROM BEST AVAILABLE COPY

purposes as described in paragraphs (1) and (2) above and may charge fees as needed to reimburse such agency for any costs of such checking.

(7) The Georgia Crime Information Center Council is hereby empowered to adopt rules, regulations and forms to implement this subsection and provide for security and privacy of information disseminated pursuant hereto giving first priority to the criminal justice requirements of this Chapter. Such rules may include requirements for users, audits of users and such other procedures as may be necessary to prevent unauthorized use of criminal history record information and to insure compliance with federal regulations.

(8) The Georgia Crime Information Center Council may adopt rules authorizing any local law enforcement agency to act as an agent for the Georgia Crime Information Center in receiving requests for information and disseminating information pursuant to such requests.

(Acts 1973, pp. 1301, 1305; 1976, pp. 617, 619, 620; 1976, pp. 1401, 1402; 1977, pp. 1243, 1244; 1978, p. 1981, eff. July 1, 1978.)

Editorial Note

Acts 1978, p. 1981, added subsection (p). 240/488 (241 S. E. 2d 245).

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	HB282(15).		X
2. Privacy and Security			
3. Dissemination Regulations	HB282(9) HB282(10) 28-45 28-55 831.31	 X X X	X X
4. Inspection	HB282(14) 92-51 Reg. 2	 X 	X
5. Challenge	HB282(14) Reg. 2,3,4	 X	X
6. Judicial Review			
7. Purge: Non-Conviction	831.32 SB393	X 	
8. Purge: Conviction			
9. Seal: Non-Conviction	SB393(1) 831.32	 X	X

ITEM	CITATION	1978 Compendium	1979 Supplement
10. Seal: Conviction	712-1256	X	
11. Remove Disqualification	712-1255 831.32	X X	
12. Deny CJ Record	712-1256 831.32	X X	
13. Research Access	HB282(9)		X
14. Accurate & Complete	HB282(5) 28-53 28-56 Reg. 4	 X X X	X
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty	HB282(16) 28.46	 X	X
18. Public Records	571-84 92-9 92-50	X X X	

ITEM	CITATION	1978 Compendium	1979 Supplement
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination	92.5 92.6 92.51 Reg. 5	X X X X	
22. Security	HB282(7)		X
23. Transaction Logs	HB282(14)		X
24. Train Employees	HB282(7)		X
25. List Systems			
26. F.O.I. Including CJ	92-50	X	
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

145

BLANK PAGE

A BILL FOR AN ACT

RELATING TO CRIMINAL HISTORY RECORD INFORMATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

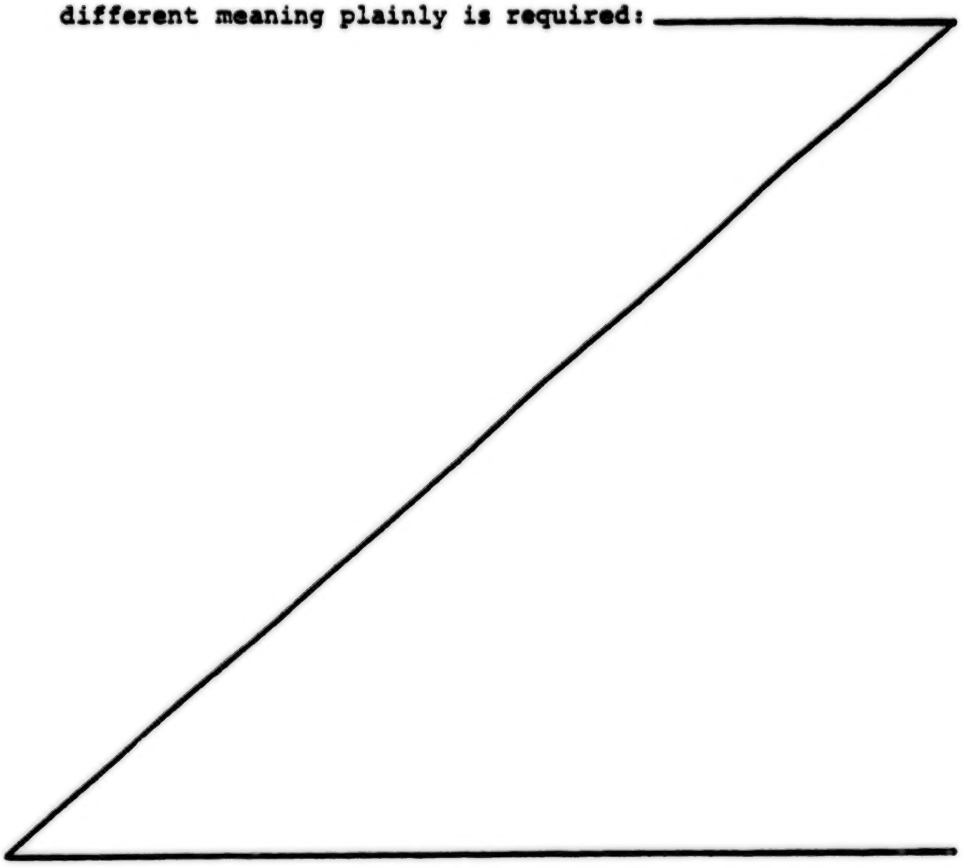
SECTION 1. The purpose of this Act is to establish a Hawaii criminal justice information data center, hereinafter referred to as the "data center", to be responsible for the collection, storage, dissemination, and analysis of all pertinent criminal history record information from all criminal justice agencies and to provide for the collection, storage, and dissemination of criminal history record information by criminal justice agencies in such a manner as to balance the right of the public and press to be informed, the right of privacy of individual citizens, and the necessity for law enforcement agencies to utilize the tools needed to prevent crimes and detect criminals in support of the right of the public to be free from crime and the fear of crime.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read:

"CHAPTER

CRIMINAL HISTORY RECORD INFORMATION

Sec. -1 Definitions. In this chapter, unless a different meaning plainly is required:



(1) "Dissemination" means transmission of criminal history record information to individuals and agencies, other than the criminal justice agency which maintains the criminal history record information, but it does not include the reporting of such information as required by law, the reporting of data on a particular transaction to another criminal justice agency so as to permit the initiation of subsequent criminal justice proceedings, the use of such information by an employee or officer of the agency maintaining the records, and the reporting of a criminal justice transaction to a state, local, or federal repository;

(2) "Criminal history record information system" or "system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information;

(3) "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests,

detentions, indictments, and other formal criminal charges, and any disposition arising therefrom, sentencing, formal correctional supervisory action, and release; but does not include intelligence or investigative information, identification information to the extent that such information does not indicate involvement of the individual in the criminal justice system, and information derived from offender-based transaction statistics systems which do not reveal the identity of individuals;

(4) "Criminal justice agency" means:

(A) Courts; or

(B) A government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice;

(5) "Administration of criminal justice" means performance of any of the following activities: detection; apprehension; detention; pretrial release; post-trial release; prosecution;

adjudication; correctional supervision; or rehabilitation of accused persons or criminal offenders; and includes criminal identification activities and the collection, storage, and dissemination of criminal history record information; but does not include crime prevention activities or criminal defense functions;

(6) "Disposition" means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination of the proceedings, or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement, and shall include but is not limited to acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to

insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, nolo contendere plea, convicted, youthful offender determination or transfer to juvenile jurisdiction, deceased, deferred disposition, dismissed--civil action, found insane or mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial--defendant discharged, executive clemency, placed on probation, paroled, released from correctional supervision, or fugitive from justice;

(7) "Complete" refers to the fact that criminal history record information should show all dispositions as the case moves through the various segments of the criminal justice system;

(8) "Accurate" refers to the fact that criminal history record information contains no erroneous information of a material nature; and

(9) "Nonconviction data" means arrest information without a disposition if an interval of one year has elapsed from the date of arrest and no

active prosecution of the charge is pending; or information disclosing that the police have elected not to refer a matter to a prosecutor, or that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed, as well as all acquittals and all dismissals; and

(10) "Data center" means the State agency responsible for the collection, storage, dissemination, and analysis of all pertinent criminal history record information and related functions, including but not limited to, providing technical assistance in the development of information systems and conducting appropriate research and statistical studies.

Sec. -2 Establishment of the data center. There shall be a data center which will be attached to the judiciary for administrative purposes. The data center shall be directed and managed by an interim director to be appointed by the governor. There shall also be a committee, composed of selected criminal justice agency personnel, to act in an advisory capacity to the data center in matters related to interagency coordination and user needs.

Sec. -3 Reporting to data center. The chiefs of the police of the counties of the State and agencies of State and county governments having power of arrest shall furnish the data center with descriptions of all such persons who are arrested by them for any felony or misdemeanor, or as fugitives from the criminal justice system of another jurisdiction, or for any offense declared by rule or regulation promulgated by the attorney general to be a significant offense necessary to be reported for the proper administration of criminal justice. The data center shall in all appropriate cases forward necessary identifying data and other information to the system maintained by the Federal Bureau of Investigation.

Sec. -4 Query of data center. Criminal justice agencies shall query the data center to assure that the most up-to-date disposition data is being used. Such inquiries shall be made prior to any dissemination except in those cases where the agency determines that time is of the essence and the center is technically incapable of responding within the necessary time period, provided, however, that where local criminal justice agencies have entered into agreements for the sharing of a computerized criminal history record information system, the agency

operating such system shall not be required to query the data center prior to disseminating information to the agencies which are party to the agreements.

Sec. -5 Reporting of dispositions. It shall be the responsibility of every criminal justice agency in this State to report to the data center the disposition of cases which enter their area in the administration of criminal justice to insure that all systems maintained in this State shall contain complete and accurate criminal history record information. All dispositions shall be reported as promptly as feasible but not later than ninety days after the happening of an event which constitutes a disposition.

Sec. -6 Systematic audit. All criminal justice agencies shall institute a process of data collection, entry, storage, and systematic audit of criminal history record information that will minimize the possibility of recording and storing inaccurate information. Any criminal justice agency which finds that it has reported inaccurate information of a material nature shall forthwith notify all criminal justice agencies known to have received such information. All criminal justice agencies shall:

(1) Maintain for a minimum period of one year a listing of the individuals or agencies both in and outside of the State to which criminal history record information was released, a record of what information was released, and the date such information was released;

(2) Establish a delinquent disposition monitoring system; and

(3) Verify all record entries for accuracy and completeness.

Sec. -7 Security. Wherever criminal history record information is collected, stored, or disseminated, the criminal justice agency or agencies responsible for the operation of the system shall:

(1) Have power to determine for legitimate security purposes which personnel can be permitted to work in a defined area where such information is stored, collected, or disseminated;

(2) Select and supervise all personnel authorized to have direct access to such information;

(3) Assure that an individual or agency authorized direct access is administratively held responsible for the physical security of criminal history record information under its control or in its custody and the protection of such information from unauthorized access, disclosure, or dissemination;

(4) Institute procedures to reasonably protect any data center of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or man-made disasters;

(5) Provide that each employee working with or having access to criminal history record information is to be made familiar with the substance and intent of this chapter and of regulations promulgated thereunder; and

(6) Require that direct access to criminal history record information is to be available only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system.

Where a noncriminal justice agency operates a system, the participating criminal justice agency shall be responsible for review, approval, and monitoring of procedures developed to assure compliance with this section.

Sec. -8 Exclusions. This chapter shall not apply to criminal history record information contained in:

(1) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;

(2) Original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public if such records are organized on a chronological basis;

(3) Court records of public judicial proceedings;

(4) Published court or administrative opinions or public judicial, administrative, or legislative proceedings;

(5) Records of traffic offenses maintained for the purpose of regulating the issuance, suspension, revocation, or renewal of driver's, pilot's, or other operators' license;

(6) Announcements of executive clemency or pardon, by the Hawaii paroling authority or the governor of the State.

Nothing in this chapter shall prevent a criminal justice agency from disclosing, to the public, criminal history record information related to the offense for which an individual is currently within the criminal justice system, including his place of incarceration; and, nothing in this chapter shall prevent a criminal justice agency from confirming prior criminal history record information to members of the news media or any other person, upon specific inquiry as to whether a named individual was arrested, detained, indicted, or other formal charge was filed, on a specific date, if the arrest record information or criminal history record information disclosed is based on data excluded by the first paragraph of this section. Nothing in this chapter prohibits the dissemination of criminal history record information for purposes of international travel, such as issuing visas and granting of citizenship.

Sec. -9 Limitations on dissemination. Dissemination of nonconviction data shall be limited, whether directly or through any intermediary, only to:

(1) Criminal justice agencies, for purposes of the administration of criminal justice and criminal justice agency employment;

(2) Individuals and agencies specified in section -10 of this chapter;

(3) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement, provided that such agreement shall specifically authorize access to data, limit the use of data to purposes for which given, and insure the security and confidentiality of the data consistent with the provisions of this chapter;

(4) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency; provided that such agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and insure the confidentiality and security of the data consistent with the purposes of this chapter;

(5) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court rule, decision, or order, as construed by appropriate state or local officials or agencies; and

(6) Agencies of state or federal government which are authorized by statute or executive order to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information.

These dissemination limitations do not apply to conviction data.

Criminal history record information disseminated to non-criminal justice agencies shall be used only for the purposes for which it was given.

No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.

Sec. -10 Dissemination. Criminal history record information may be disseminated to:

(1) The governor in individual cases or situations wherein he elects to become actively involved in the investigation of criminal activity or the administration of criminal justice in accordance with his constitutional duty to insure that the laws be faithfully executed;

(2) The attorney general in connection with his statutory authority and duties in the administration and enforcement of the criminal laws and for the purpose of administering and insuring compliance with the provisions of this chapter;

(3) To such other individuals and agencies who are provided for in this chapter or by rule or regulation.

Sec. -11 Office of correctional information and statistics. The data center shall coordinate its activities with the records system of the intake service centers of the office of correctional information and statistics. Criminal history record information shall be provided from this office to the data center and the functions of each shall be coordinated so that there will be no overlap, or duplication of efforts.

Sec. -12 Juvenile records. Dissemination and disposition of records concerning proceedings relating to the adjudication of a juvenile as a delinquent or in need of supervision (or the equivalent) in family court to non-criminal justice agencies is prohibited, unless a statute, court order, rule,.or decision, or federal executive order specifically authorizes such dissemination, except that juvenile records may be disseminated to individuals and agencies set forth in paragraphs (3) and (4) of section -9. Juvenile records disseminated to non-criminal justice agencies shall be used only for the purposes for which they were given and may not be disseminated further.

Sec. -13 Annual audits. The attorney general shall conduct annual audits of a representative sample of criminal justice agencies which may be chosen on a random basis, to verify the accuracy and completeness of criminal history record information maintained by such agencies, and to determine adherence with this chapter and regulations promulgated thereunder. Criminal justice agencies shall retain appropriate records to facilitate the annual audits. Audit of the data center shall be performed by another state agency.

Sec. -14 Access and review. Any individual who asserts that he has reason to believe that criminal history record information relating to him is maintained by any information system in this State shall be entitled to review such information for the purpose of determining its accuracy and completeness by making application to the agency operating such system. The applicant shall provide satisfactory identification which shall be positively verified by fingerprints. Rules and regulations promulgated under this section shall include provisions for administrative review and necessary correction of any claim by the individual to whom the information relates that the information is inaccurate or incomplete; provisions for administrative appeal where a criminal justice agency refuses to correct challenged information to the satisfaction of the individual to whom the information relates; provisions for supplying to an individual whose record has been corrected, upon his request, the names of all non-criminal justice agencies to which the data have been given; and provisions requiring the correcting agency to notify all criminal justice recipients of corrected information. The review authorized by this section shall be limited to a review of criminal history record information.

MICROFILMED FROM BEST AVAILABLE COPY

Sec. -15 Rules and regulations. The attorney general shall adopt rules and regulations, as may be necessary, which will insure compliance with the provisions of this chapter by the most efficient and effective means possible.

Sec. -16 Violations. Any person who knowingly permits unauthorized access to criminal history record information, or who knowingly disseminates criminal history record information in violation of the provisions of this chapter, or any person violating any agreement authorized by paragraphs (3) and (4) of section -9, or any person who gains unauthorized access to criminal history record information shall be guilty of a misdemeanor."

SECTION 3. Any provision of this Act which is held to be a legislative mandate to the counties pursuant to Article VIII, section 5, of the Hawaii State Constitution shall be invalid. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. This Act shall take effect upon its approval.

A BILL FOR AN ACT

RELATING TO CRIMINAL PROCEDURE: DEFERRED ACCEPTANCE OF GUILTY PLEA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 853-1, Hawaii Revised Statutes, is amended by amending subsection (e) to read:

"(e) Upon discharge of the defendant and dismissal of the charge against him under this section, the defendant may apply for expungement <u>not less than one year following discharge</u>, pursuant to section 831-3.2[, from all official records, all recordation relating to his arrest, arraignment, indictment, information, plea of guilty, or dismissal and discharge, except that all records of his arrest, arraignment, indictment, information, plea of guilty, or dismissal and discharge shall be preserved at the police department of the county where the offense occurred, in the case of misdemeanors, and at the office of the attorney general in the case of felonies, and made accessible to the adult probation division and any court for purposes of sentencing for any offense committed by the defendant].

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 3. This Act shall take effect upon approval, however, all misdemeanor records preserved at any police department pursuant to section 853-1(e), Hawaii Revised Statutes, shall be transmitted to the office of the attorney general and shall be expunged pursuant to the provisions of section 831-3.2, Hawaii Revised Statutes.

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	19-5201 19-4812	X X	
2. Privacy and Security			
3. Dissemination Regulations	19-4812	X	
4. Inspection	H. 82(o)		X
5. Challenge			
6. Judicial Review			
7. Purge: Non-Conviction	19-4813	X	
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete	19-4812 19-4813	X X	
15. Dedicate	19-5202	X	
16. Civil Remedy			
17. Criminal Penalty			
18. Public Records	9-301	X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security			
23. Transaction Logs			
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

169

BLANK PAGE

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 82

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO CRIMINAL IDENTIFICATION; AMENDING SECTION 19-4812, IDAHO CODE, TO LIMIT ACCESS TO CRIMINAL IDENTIFICATION INFORMATION TO AUTHORIZED AGENCIES REQUESTING INFORMATION, AND AUTHORIZING AN INDIVIDUAL UPON COMPLETION OF SATISFACTORY FINGERPRINT INDENTIFICATION TO REVIEW THE CRIMINAL HISTORY INFORMATION PERTAINING TO THAT INDIVIDUAL.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-4812, Idaho Code, be, and the same is hereby amended to read as follows:

19-4812. CRIMINAL IDENTIFICATION, RECORDS AND STATISTICS. (1) Definitions as used in this section and section 19-4813, Idaho Code:

(a) "Bureau" means the criminal identification, records and communications bureau in the department of law enforcement of the state of Idaho.

(b) "Law enforcement agency" means a governmental unit of one or more persons employed full time by the state or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(c) "Offense" means an act which is a felony, a misdemeanor or a petty misdemeanor.

(2) The bureau shall:

(a) Obtain and file fingerprints, descriptions, photographs and any other available identifying data on persons who have been arrested or taken into custody in this state:

1. for an offense which is a felony;

2. for an offense which is a misdemeanor or petty misdemeanor involving burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, controlled substances, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, or worthless checks;

3. for an offense charged as disorderly conduct but which relates to an act connected with one or more of the offenses under subdivision 2;
4. as a fugitive from justice;
5. for any other offense designated by the director of the bureau.

(b) Accept for filing fingerprints and other identifying data, taken at the discretion of the law enforcement agency involved, on persons arrested or taken into custody for offenses other than those listed in paragraph (a).

(c) Obtain and file fingerprints and other available identifying data on unidentified human corpses found in this state.

(d) Obtain and file information relating to identifiable stolen or lost property.

(e) Obtain and file a copy or detailed description of each arrest warrant issued in this state in which the law enforcement agency desires the return of the person described in said warrant but which is not served because the whereabouts of the person named on the warrant is unknown or because that person has left the state. All available identifying data shall be obtained with the copy of the warrant, including any information indicating that the person named on the warrant may be armed, dangerous or possessed of suicidal tendencies.

(f) Collect information concerning the number and nature of all offenses designated by the director of the bureau, including, but not limited to, Part I and Part II offenses as defined by the federal bureau of investigation under its system of uniform crime reports for the United States which are known to have been committed in this state, the legal action taken in connection with such offenses from the inception of the complaint to the final discharge of the defendant and such other information as may be useful in the study of crime and the administration of justice. The director of the bureau may determine any other information to be obtained regarding crime statistics. However, the information shall include such data as may be requested by the federal bureau of investigation under its system of uniform crime reports for the United States.

(g) Furnish all reporting officials with forms and instructions which specify in detail the nature of the information required under paragraphs (a) to (f), inclusive, the time it is to be forwarded, the method of classifying and such other matters as shall facilitate collection and compilation.

(h) Cooperate with and assist all law enforcement agen-

cies in the state in the establishment of a state system of criminal identification and in obtaining fingerprints and other identifying data on all persons described in paragraphs (a), (b) and (c).

(i) Offer assistance and, when practicable, instructions to all local law enforcement agencies in establishing efficient local bureaus of identification and records systems.

(j) Compare the fingerprints and descriptions that are received from law enforcement agencies with the fingerprints and the descriptions already on file and, if the person arrested or taken into custody is a fugitive from justice or has a criminal record, immediately notify the law enforcement agencies concerned and supply copies of the criminal records to these agencies.

(k) Make available all statistical information obtained to the governor and the legislature.

(l) Prepare and publish reports and releases at least once a year and no later than July 1, containing the statistical information gathered under this section and presenting an accurate picture of crime in this state and of the operation of the agencies of criminal justice.

(m) Make available upon request, to all local and state law enforcement agencies in this state, to all federal law enforcement and criminal identification agencies, and to state law enforcement and criminal identification agencies in other states, any information in the files of the bureau which aid these agencies in the performance of their official duties. For this purpose the bureau shall operate on a twenty-four (24) hour a day basis, seven (7) days a week. Such information may also be made available to any other agency of this state or political subdivision thereof, and to any other federal agency <u>as authorized</u>, <u>and</u> upon assurance by the agency concerned that the information is to be used for official purposes only.

(n) Cooperate with other agencies of this state, the criminal justice agencies of other states, and the uniform crime reports and the national crime information center systems of the federal bureau of investigation in developing and conducting an interstate, national and international system of criminal identification, records and statistics.

<u>(o) Any individual upon completion of satisfactory fingerprint identification may review all criminal history record information pertaining to that individual contained within the files of the criminal identification bureau.</u>

MICROFILMED FROM BEST AVAILABLE COPY

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	38-206-1 38-209-3 127-55A	X X X	
2. Privacy and Security	38-209-6.15	X	
3. Dissemination Regulations	38-206-7 38-1003-5-1	X X	
4. Inspection	Reg. 3,4,5		X
5. Challenge	Reg. 5		X
6. Judicial Review			
7. Purge: Non-Conviction	38-206-5 127-55A	X	
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete	38-206-2 38-206-2.1 38-206-5	X X X	
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty	38-206-7	X	
18. Public Records	116-43.4	X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security			
23. Transaction Logs			
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

ILLINOIS CRIMINAL JUSTICE INFORMATION COUNCIL

REGULATIONS GOVERNING THE SECURITY OF CRIMINAL HISTORY RECORD INFORMATION

These regulations governing the security of criminal history record information are adopted in accordance with the provisions of the Federal Omnibus Crime Control and Safe Streets Act of 1968, as amended, and regulations issued under it. Pursuant to Executive Order Number 7 (1977), the Illinois Criminal Justice Information Council is responsible for developing uniform policies with respect to criminal justice information and has the duty and responsibility to issue regulations which ensure the security of criminal history record information consistent with state and federal laws.

Effective immediately, all State and local criminal justice agencies and individuals in the State of Illinois receiving federal funds for the purpose of either collecting, storing, or disseminating criminal history record information processed by manual or automated operations shall abide by the security provisions of the federal Criminal Justice Information Systems Regulations, 28 Code of Federal Regulations, part 20, subpart B, section 20.21(f).

These regulations shall automatically expire upon ~~January~~ July 1, 1979.

ILLINOIS CRIMINAL JUSTICE INFORMATION COUNCIL

Resolution #4
Security of Criminal History Record Information

WHEREAS, the Illinois Criminal Justice Information Council is responsible for developing uniform policies with respect to criminal justice information and for ensuring the security of criminal history record information consistent with state and federal laws.

Be it RESOLVED that Resolution #1 of the Illinois Criminal Justice Information Council adopted on December 20, 1977, is hereby rescinded and superseded by this resolution.

Be it FURTHER RESOLVED that the Criminal Justice Information Council shall study the security of criminal history record information in the State of Illinois and complete said study before July 1, 1979.

Be it FURTHER RESOLVED that the expiration date of the Criminal Justice Information Council Regulations Governing the Security of Criminal History Record Information is hereby extended to July 1, 1979.

Be it FURTHER RESOLVED that the staff of the Illinois Criminal Justice Information Council is hereby directed to file notice of said extension with the Index Division of the Secretary of State.

ILLINOIS REGISTER

Illinois Department of Law Enforcement
Notice of Proposed Rulemaking
Rules and Regulations governing Individual's Right
to Access and Review Criminal History Record Information

NOTICE

The Department of Law Enforcement proposes to adopt new rules and regulations entitled, "Rules and Regulations governing Individual's Right to Access and Review Criminal History Record Information," promulgated in accordance with 1975 Illinois Revised Statutes, Chapter 38, Paragraph 206-1, et seq.; Chapter 127, Paragraph 55a, et seq.; and 42 United States Code 3701, et seq.

The purpose of these proposed rules is to provide procedures for persons to access and review criminal history record information which is maintained by the Department of Law Enforcement, and allows them the right to challenge the accuracy of such information as mandated by Title 28, of the Code of Federal Regulations, Section 20.21(g).

MICROFILMED FROM BEST AVAILABLE COPY

ILLINOIS REGISTER

RULES AND REGULATIONS GOVERNING INDIVIDUALS RIGHT TO ACCESS AND REVIEW CRIMINAL HISTORY RECORD INFORMATION

RULE I. DEFINITIONS

As used in these rules, the following terms are used as hereinafter defined unless the content requires a different meaning:

The term "United States Department of Justice Rules and Regulations" refers to the Department of Justice Criminal Justice Information Systems Rules and Regulations, 41 F.R., 11713 March 19, 1976.

The term "Act" refers to Title 42 U.S.C. 3771b.

The term "Criminal History Record Information" refers to information collected on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges or proceedings, and disposition arising therefrom, sentencing, correctional supervision, and release.

The term "Criminal History Transcript" refers to the official document used by the Department of Law Enforcement to disseminate Criminal History Record Information.

The term "State Central Repository" refers to the Department of Law Enforcement which is responsible for Criminal History Record Information.

The term "Criminal Justice Information Systems Council" refers to a body created pursuant to Statute or Executive order, whose duties include reviewing appeals concerning Criminal History Record Information.

The term "Reviewing Agency" refers to a law enforcement agency or a correctional facility.

The term "Access and Review" refers to the requestor's right to review a current copy of his/her Criminal History Record Information maintained by the Department of Law Enforcement.

The term "Requestor" refers to an individual who initiates access and review of his/her Criminal History Record Information.

The term "Challenge" refers to the requestor's right to contest his/her Criminal History Record Information or portions thereof, and an opportunity to provide supporting documentation.

The term "Administrative Review" refers to the requestor's right to review of a record challenge by the Department of Law Enforcement.

The term "Administrative Appeal" refers to the requestor's right to a review of the Administrative Review by the Criminal Justice Information Systems Council.

RULE II. APPLICABILITY OF RULES

These rules apply only to Criminal History Record Information collected, stored, and disseminated by the Department of Law Enforcement pursuant to Illinois Revised Statutes, Chapter 38, Section 206-1 et. seq. (1975) and as amended.

RULE III. REVIEWING AGENCIES

3.01. Any law enforcement agency or correctional facility in the State of Illinois shall serve as a Reviewing Agency upon demand of the Requestor.

3.02. If the Requestor demands access and review of Criminal History Record Information maintained by the Department of Law Enforcement and is not at the time of the demand within the State of Illinois, the Department shall make arrangements with a law enforcement agency or correctional facility to serve as a reviewing agency.

3.03. The Reviewing Agency may be changed by the Requestor upon written notification to the original Reviewing Agency and the Department of Law Enforcement. The Department of Law Enforcement shall advise the new Reviewing Agency of the status of the review.

3.04. Reviewing Agencies shall make available access and review services between the hours of 8 AM and 4 PM daily, except Saturdays, Sundays, legal holidays, and during emergency conditions.

3.05 Reviewing Agencies whall provide necessary personnel and facilities to assist the Requestor in completing forms and assisting in the explanation of Criminal History Record Information and decisions.

3.06. Reviewing Agencies may charge a fee not to exceed $10.00 for processing access and review requests.

RULE IV. LEGAL COUNSEL

The Requestor may be accompanied by his/her legal counsel or conduct any processes of access and review through his/her counsel except as necessary to establish positive identification of the Requestor.

RULE V. FORMS AND PROCEDURES

5.01. Access and Review may be initiated at any Reviewing Agency. The Request for Access and Review, Form CJIS-OPER-0105, as provided in Exhibit I, shall be used. The Requestor will be required to be fingerprinted.

MICROFILMED FROM BEST AVAILABLE COPY

5.02. The Reviewing Agency shall forward the Request for Access and Review to the Department of Law Enforcement within 7 calendar days from the date the request was completed.

5.03. The Department of Law Enforcement shall furnish a Criminal History Transcript or a letter stating the Department of Law Enforcement does not have Criminal History Record Information for the Requestor within 30 days from the date the Department of Law Enforcement received the request.

5.04. Upon receipt of the Criminal History Transcript or letter stating the Department of Law Enforcement does not have Criminal History Record Information for the Requestor, the Reviewing Agency shall notify the Requestor within 5 calendar days by means of the Notice of Review, Form CJIS-OPER-0106, specifying the date, time, place of review and name of the reviewing officer.

5.05. If the individual cannot be present at the scheduled time, the Requestor shall contact the Reviewing Agency and establish a new review date. If the individual does not acknowledge within 25 days from the date mailed, the review shall be considered complete and copy 1 of the Notice of Review, Form CJIS-OPER-0106, as provided in Exhibit II, shall be labeled "unacknowledged" and shall be immediately returned to the Department of Law Enforcement.

5.06. The Reviewing Agency shall inform the Requestor that he has the right to challenge any or all the information contained in his Criminal History Transcript.

5.07. If the Requestor is satisfied that the Criminal History Record Information is accurate and complete, the transaction is considered complete.

5.08. If the Requestor is not satisfied that the CHRI is accurate, a Record Challenge, Form CJIS-OPER-0107, as provided in Exhibit III, may be submitted to the Department of Law Enforcement by the individual through the Reviewing Agency stating specifically what information is being challenged.

5.09. If the Record Challenge is approved, denied or partially approved, the Department of Law Enforcement shall notify the Reviewing Agency within 30 days of receipt of the Record Challenge. If multiple Record Challenges are submitted, the Department of Law Enforcement shall respond 30 days after receipt of the last challenge. If response to the Record Challenge will exceed 30 days, the Department of Law Enforcement will notify the Reviewing Agency in writing of the anticipated delay. The delay shall not exceed 30 days. The Reviewing Agency shall notify the Requestor within 5 calendar days by means of a Notice of Review, Form CJIS-OPER-0106, specifying the date, time, place of review and the name of the reviewing officer.

5.10. If the individual cannot be present at the scheduled time, the Requestor shall contact the Reviewing Agency and establish a new review date. If the individual does not acknowledge within 25 days from the date mailed, the Record Challenge shall be considered complete and copy 1 of the Notice of Review, Form CJIS-OPER-0106, labeled "unacknowledged", and shall be promptly returned to the Department of Law Enforcement.

5.11. If the Record Challenge is favorable and/or the Requestor is satisfied that the Criminal History Record Information is accurate and complete, the transaction is considered complete.

5.12. If the Record Challenge is denied, or partially approved, the Reviewing Agency must then inform the Requestor of his/her right to file an Administrative Review. This Administrative Review, Form CJIS-OPER-0109, may then be submitted by the individual through the Reviewing Agency to the Department of Law Enforcement. Once again the information that is being reviewed must be stated specifically.

5.13. The Department of Law Enforcement shall notify the Reviewing Agency within 30 days of the receipt of the Administrative Review, if the Administrative Review is approved, denied, or partially approved. If response to the Administrative Review will exceed 30 days, the Department of Law Enforcement will notify the Reviewing Agency in writing of the anticipated delay. The delay shall not exceed 30 days. The Reviewing Agency shall notify the Requestor within 5 days by means of a Notice of Review, Form CJIS-OPER-0106, specifying the date, time and place of Review and name of the reviewing officer.

5.14. If the individual cannot be present at the scheduled time, the Requestor shall contact the Reviewing Agency and establish a new review date. If the individual does not acknowledge within 25 days from the date mailed, the Review shall be considered complete, and copy 1 of the Notice of Review, Form CJIS-OPER-0106, shall be labeled "unacknowledged" and shall be immediately returned to the Department of Law Enforcement.

5.15. If the Administrative Review is favorable and/or the Requestor is satisfied that the Criminal History Record Information is accurate and complete, the transaction is considered complete.

5.16. If the Administrative Review is denied, the Reviewing Agency must then inform the Requestor of his/her right to file an Administrative Appeal. This Administrative Appeal, Form CJIS-OPER-0108, as provided in Exhibit IV, may then be submitted by the individual through the Reviewing Agency to the Department of Law Enforcement. The information that is being reviewed must be specifically stated.

5.17. The Administrative Appeal shall be reviewed by the Criminal Justice Information Council who will advise the Requestor and the Department of Law Enforcement, in writing, of the decision.

MICROFILMED FROM BEST AVAILABLE COPY

5.18 Challenges, Administrative Reviews and Administrative Appeals shall be filed by the Requestor within 60 calendar days from the date the Requestor was notified of the prior decision.

5.19. All Notices of Review shall be sent by certified mail.

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	4-23-4-1	X	
2. Privacy and Security			
3. Dissemination Regulations	10-1-2.5-3 5-2-4-6	X X	
4. Inspection	4-1-6-3	X	
5. Challenge	4-1-6-5	X	
6. Judicial Review			
7. Purge: Non-Conviction	35-4-8-1	X	
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete	4-1-6-2 4-1-6-5 5-2-4-4 10-1-1-5 10-1-1-18	X X X X X	
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty	5-2-4-7 35-4-8-4	X X	
18. Public Records	4-1-6-1 5-14-1-2	X X	
19. Separate Files	5-2-4-2	X	
20. Intelligence Collection	5-2-4-3	X	
21. Intelligence Dissemination	5-2-4-6	X	
22. Security	4-1-6-2	X	
23. Transaction Logs	4-1-6-2	X	
24. Train Employees	4-1-6-2	X	
25. List Systems	4-1-6-7	X	
26. F.O.I. Including CJ	4-1-6-1	X	
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	749.1	X	
2. Privacy and Security	749B.19	X	
3. Dissemination Regulations	749A-4 749B.2 749B.3	X X X	
4. Inspection	749A.4 749B.5 749B.8	X X X	
5. Challenge	749B.5 749B.8	X X	
6. Judicial Review	749B.5	X	
7. Purge: Non-Conviction	749B.16 749B.17	X	
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record			
13. Research Access	749B.4	X	
14. Accurate & Complete	749.4 749B.5 749B.12 749B.15	X X X X	
15. Dedicate		X	
16. Civil Remedy	749B.6	X	
17. Criminal Penalty	749B.5 749B.7 749B.9	X X X	
18. Public Records	749B.18	X	
19. Separate Files	749B.8 749B.9	X X	
20. Intelligence Collection			
21. Intelligence Dissemination	749B.3 749B.8 749B.19	X X X	
22. Security	749B.10 749B.12 749B.14	X X X	
23. Transaction Logs	749B.2 749B.3	X X	
24. Train Employees	749B.11	X	
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ	749B.18	X	

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	HB2562		X
2. Privacy and Security	SB406,118-2		X
3. Dissemination Regulations	22-3711 SB406,118-5 118-6,118-7 Reg.	X	 X X
4. Inspection	21-4605 21-4616 21-4617 SB406,118-6,118-9 Reg.	X X X	 X X
5. Challenge	HB2562 SB406,118-6 Reg.		X X
6. Judicial Review			
7. Purge: Non-Conviction			
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction	21-4616 60-2702A	X X	
11. Remove Disqualification	21-4616 21-4617 22-3722	X X X	
12. Deny CJ Record	21-4616 21-4617	X	
13. Research Access			
14. Accurate & Complete	HB2562 75-5218 50-712 21-2501	 X X X	X
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty	SB406,118-7		
18. Public Records	45-201	X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination	21-4617	X	
22. Security	HB2562		X
23. Transaction Logs			
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ	50-712	X	
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

CRIMES AND PUNISHMENTS

CHAPTER 118 *

Senate Bill No. 406

AN ACT relating to crimes; concerning the collection, storage and dissemination of certain criminal justice system information; establishing a privacy and security advisory board; establishing a criminal justice system information central repository; authorizing the promulgation of rules and regulations; declaring certain acts to be a crime.

Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in this act, unless the context clearly requires otherwise, the following words and phrases shall have the meanings ascribed to them herein:

(a) "Central repository" means the criminal justice information system central repository created by this act.

(b) "Criminal history record information" means data initiated or collected by a criminal justice agency on a person pertaining to a reportable event. The term does not include:

(1) Data contained in intelligence or investigatory files or police work-product records used solely for police investigation purposes;

(2) data pertaining to a proceeding pursuant to the Kansas juvenile code, but it does include data pertaining to a person following waiver of jurisdiction pursuant to K.S.A. 1977 Supp. 38-808;

(3) wanted posters, police blotter entries, court records of public judicial proceedings, or published court opinions;

(4) data pertaining to violations of the traffic laws of the state or any other traffic law or ordinance, other than vehicular homicide;

(5) presentence investigation and other reports prepared for use by a court in the exercise of criminal jurisdiction or by the governor in the exercise of the power of pardon, reprieve or commutation; or

(c) "Criminal justice agency" means any government agency or subdivision of any such agency which is authorized by law to exercise the power of arrest, detention, prosecution, adjudication, correctional supervision, rehabilitation, or release of persons suspected, charged, or convicted of a crime and which allocates a substantial portion of its annual budget to any of these functions. The term includes, but is not limited to, the following agencies, when exercising jurisdiction over criminal matters or criminal history record information:

(1) State, county, municipal and railroad police departments, sheriffs' offices and county-wide law enforcement agencies, correctional facilities, jails, and detention centers;

(2) the offices of the attorney general, county or district attorneys, and any other office in which are located persons authorized by law to prosecute persons accused of criminal offenses;

(3) the district courts, the court of appeals, the supreme court, the municipal courts and the offices of the clerks of these courts.

(d) "Criminal justice information system" means the equipment (including computer hardware and software), facilities, procedures, agreements, and personnel used in the collection, processing, preservation, and dissemination of criminal history record information.

(e) "Disseminate" means to transmit criminal history record information in any oral or written form. The term does not include:

(1) The transmittal of such information within a criminal justice agency;

(2) the reporting of such information as required by this act; or

(3) the transmittal of such information between criminal justice agencies in order to permit the initiation of subsequent criminal justice proceedings against a person relating to the same offense.

(f) "Reportable event" means an event specified or provided for in section 5.

(g) "Director" means the director of the Kansas bureau of investigation.

Sec. 2. There is hereby established a privacy and security advisory board composed of eleven (11) members to be appointed as provided in this section. The attorney general shall appoint four members one of which shall be a county or district attorney, one of which shall be an assistant or deputy attorney general, one of which shall be a sheriff or the head of a county-wide law enforcement agency, and one of which shall be a police chief of a city in this state. The chief justice of the supreme court shall appoint one member who is a chief clerk of the district court. The governor shall appoint one member from the general public. A vacancy shall be filled by the appointing authority. The remaining five members shall be as follows: (1) The director of the Kansas bureau of investigation; (2) the superintendent of the highway patrol or the superintendent's designee; (3) the secretary of corrections or said secretary's designee; (4) the chairperson of the judiciary committee of the house of representatives of this state, or such chairperson's designee from among members of the house of representatives; and (5) the chairperson of the judiciary committee of the state senate, or such chairperson's designee from among members of the senate. The chairperson of the advisory board shall be the chairperson of the senate judiciary

committee or such chairperson's designee from among members of the senate. Members shall receive no compensation for their services, but shall receive mileage and expenses as provided in subsections (c) and (d) of K.S.A. 75-3223. The first meeting of the board shall be at a time and place designated by the director. For administrative and budgeting purposes the advisory board shall be deemed an adjunct of the Kansas bureau of investigation.

Sec. 3. (a) The advisory board created pursuant to section 2 shall perform the duties set forth in this section and those of an advisory nature that may otherwise be delegated to it in accordance with law.

(b) It shall advise the director on matters pertaining to the development, operation, and maintenance of the criminal justice information system, and shall monitor the operation of the system.

(c) It shall propose and recommend to the director, rules and regulations necessary to the development, operation, and maintenance of the criminal justice information system.

(d) It shall: (1) Recommend procedures and methods for the use of criminal history record information for the purpose of research, evaluation, and statistical analysis of criminal activity;

(2) recommend any legislation necessary for the implementation, operation, and maintenance of the criminal justice information system; and

(3) report to the governor and the legislature on the development and operation of the criminal justice information system.

Sec. 4. (a) The director shall adopt appropriate rules and regulations for agencies in the executive branch of government and for criminal justice agencies other than those that are part of the judicial branch of government to implement the provisions of this act. Any rule and regulation to be adopted by the director shall first be submitted by the director to the speaker of the house of representatives and the president of the senate at the beginning of the next legislative session. Such rules and regulations shall not become effective until the same are approved by resolution of both houses.

(b) The director shall develop procedures to permit and encourage the transfer of criminal history record information among and between courts and affected agencies in the executive branch, and especially between courts and the central repository.

(c) The rules and regulations adopted by the director shall include those: (1) Governing the collection, reporting, and dissemination of criminal history record information by criminal justice agencies;

(2) necessary to insure the security of all criminal history

record information reported, collected and disseminated by and through the criminal justice information system;

(3) necessary for the coordination of all criminal justice data and information processing activities as they relate to criminal history record information;

(4) governing the dissemination of criminal history record information;

(5) governing the procedures for inspection and challenging of criminal history record information;

(6) governing the auditing of criminal justice agencies to insure that criminal history record information is accurate and complete and that it is collected, reported, and disseminated in accordance with this act;

(7) governing the development and content of agreements between the central repository and criminal justice and noncriminal justice agencies;

(8) governing the exercise of the rights of inspection and challenge provided in this act.

(d) Rules and regulations adopted by the director may not be inconsistent with the provisions of this act.

Sec. 5. (a) The following events are reportable events under this act:

(1) Issuance of an arrest warrant;

(2) an arrest;

(3) release of a person after arrest without the filing of a charge;

(4) dismissal or quashing of an indictment or criminal information;

(5) an acquittal, conviction, or other disposition at or following trial, including a finding of probation before judgment;

(6) imposition of a sentence;

(7) commitment to a correctional facility, whether state or locally operated;

(8) release from detention or confinement;

(9) an escape from confinement;

(10) a pardon, reprieve, commutation of sentence, or other change in a sentence, including a change ordered by a court;

(11) judgment of an appellate court that modifies or reverses the lower court decision;

(12) order of a court in a collateral proceeding that affects a person's conviction, sentence, or confinement, including any expungement or annulment of arrests or convictions pursuant to state statute; and

(13) any other event arising out of or occurring during the course of criminal justice proceedings declared to be reportable by rule or regulation of the director.

(b) There is hereby established a criminal justice information system central repository for the collection, storage, and dissemination of criminal history record information. The central repository shall be operated by the Kansas bureau of investigation under the administrative control of the director.

(c) Every criminal justice agency shall report criminal history record information, whether collected manually or by means of an automated system, to the central repository, in accordance with rules and regulations adopted pursuant to this act.

(d) Reporting methods may include: (1) Submittal of criminal history record information by a criminal justice agency directly to the central repository;

(2) if the information can readily be collected and reported through the court system, submittal to the central repository by the administrative office of the courts; or

(3) if the information can readily be collected and reported through criminal justice agencies that are part of a geographically based information system, submittal to the central repository by such agencies.

(e) Nothing in this section shall prevent a criminal justice agency from maintaining more detailed information than is required to be reported to the central repository. However, the dissemination of any such criminal history record information is governed by the provisions of this act.

(f) The director may determine, by rule and regulation, the reportable events to be reported by each criminal justice agency, in order to avoid duplication in reporting.

Sec. 6. The director, pursuant to the rules and regulations adopted, shall develop agreements between the central repository and criminal justice agencies pertaining to:

(a) The method by which the agency will report information, including the method of identifying an offender in a manner that permits other criminal justice agencies to locate the offender at any stage in the criminal justice system, the time of reporting, the specific data to be reported by the agency, and the place of reporting;

(b) the services to be provided to the agency by the central repository;

(c) the conditions and limitations upon the dissemination of criminal history record information by the agency;

(d) the maintenance of security in all transactions between the central repository and the agency;

(e) the method of complying with the right of a person to inspect, challenge, and correct criminal history record information maintained by the agency;

(f) audit requirements to ensure the accuracy of all information reported or disseminated;

(g) the timetable for the implementation of the agreement;

(h) sanctions for failure of the agency to comply with any of the provisions of this act, including the revocation of any agreement between the agency and the central repository and appropriate judicial or administrative proceedings to enforce compliance; and

(i) other provisions that the director may deem necessary.

Sec. 7. (a) A criminal justice agency and the central repository may not disseminate criminal history record information except in strict accordance with laws including applicable rules and regulations adopted pursuant to this act. A criminal justice agency may not request such information from the central repository or another criminal justice agency unless it has a legitimate need for the information.

(b) Noncriminal justice persons and agencies may receive criminal history record information for such purposes and under such conditions as may be authorized by law, including rules and regulations adopted pursuant to this act.

(c) The central repository or a criminal justice agency may not subvert the requirements of this section by merely confirming or denying the existence or nonexistence of criminal history record information relating to a person.

(d) In addition to any other remedy or penalty authorized by law, any individual violating or causing a violation of the provisions of this section shall be deemed guilty of a class A misdemeanor. If the person is employed or licensed by a state or local government agency, a conviction shall constitute good cause to terminate employment or to revoke or suspend a license.

Sec. 8. Notwithstanding the provisions of the preceding section, a criminal justice agency may disclose the status of a pending investigation of a named person, or the status of a pending proceeding in the criminal justice system, if the request for information is reasonably contemporaneous with the event to which the information relates and the disclosure is otherwise appropriate.

Sec. 9. (a) Subject to the provisions of this act and rules and regulations adopted pursuant thereto, any person may inspect and challenge criminal history record information maintained by a criminal justice agency concerning themselves. A person's attorney may inspect such information if such attorney satisfactorily establishes his or her identity and presents a written authorization from his or her client.

(b) Nothing in this section requires a criminal justice agency to make a copy of any information or allows a person to remove any document for the purpose of making a copy of it. A person having the right of inspection may make notes of the information.

Sec. 10. (a) It is unlawful for any employer or prospective employer to require a person to inspect or challenge any criminal history record information relating to that person for the purpose of obtaining a copy of the person's record in order to qualify for employment.

(b) Any person violating the provisions of this section shall be deemed guilty of a class A misdemeanor.

Sec. 11. Criminal history record information which was recorded prior to the effective date of this act is subject to the right of access and challenge in accordance with this act. However, the duty of a criminal justice agency is to make a reasonable search for such information. There is no duty to provide access to criminal history record information that cannot be located after a reasonable search.

Sec. 12. From and after July 1, 1979, sections 2 and 3 of this act shall be and are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the official state paper.

Approved February 24, 1978.

Published in the official state paper March 1, 1978.

HOUSE BILL No. 2562

AN ACT relating to criminal history record information; concerning the adoption of rules and regulations relating thereto; amending K.S.A. 1978 Supp. 22-4704 and repealing the existing section.

Be it encted by the Legislatue of the State of Kansas:

Section 1. K.S.A. 1978 Supp. 22-4704 is hereby amended to read as follows: 22-4704. (a) *In accordance with the provisions of K.S.A. 77-415 et seq., and amendments thereto,* the director shall adopt appropriate rules and regulations for agencies in the executive branch of government and for criminal justice agencies other than those that are part of the judicial branch of government to implement the provisions of this act. ~~Any rule and regulation to be adopted by the director shall first be submitted by the director to the speaker of the house of representatives and the president of the senate at the beginning of the next legislative session. Such rules and regulations shall not become effective until the same are approved by resolution of both houses.~~

(b) The director shall develop procedures to permit and encourage the transfer of criminal history record information among and between courts and affected agencies in the executive branch, and especially between courts and the central repository.

(c) The rules and regulations adopted by the director shall include those: (1) Governing the collection, reporting, and dissemination of criminal history record information by criminal justice agencies;

(2) necessary to insure the security of all criminal history record information reported, collected and disseminated by and through the criminal justice information system;

(3) necessary for the coordination of all criminal justice data and information processing activities as they relate to criminal history record information;

(4) governing the dissemination of criminal history record information;

(5) governing the procedures for inspection and challenging of criminal history record information;

(6) governing the auditing of criminal justice agencies to insure that criminal history record information is accurate and complete and that it is collected, reported, and disseminated in accordance with this act;

(7) governing the development and content of agreements between the central repository and criminal justice and noncriminal justice agencies;

(8) governing the exercise of the rights of inspection and challenge provided in this act.

(d) Rules and regulations adopted by the director may not be inconsistent with the provisions of this act.

Sec. 2. K.S.A. 1978 Supp. 22-4704 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

STATE OF KANSAS

USER AGREEMENT

FOR CRIMINAL HISTORY RECORD INFORMATION

This agreement is made and entered into by and between the Kansas Bureau of Investigation, hereinafter referred to as KBI, and _____, an authorized criminal justice agency in the State of Kansas, hereinafter referred to as Agency.

Definitions

1. The term criminal justice agency has the same meaning as contained in Title 28 of the Code of Federal Regulations or subsequent federal or state law or regulation which may supersede Title 28.

2. The term criminal history records information has the same meaning as contained in Title 28 or the Code of Federal Regulations or subsequent federal or state law or regulation which may supersede Title 28.

3. The term designated agency refers to all criminal justice agencies regarding their collection, storage, or dissemination of criminal history records information.

4. The term central repository refers to the KBI which has been designated to provide the services of a central state repository in the maintenance and dissemination of complete criminal history records information.

I. With respect to the Kansas Security and Privacy Plan and criminal history records information, it is agreed that:

   1. Agency, in signing this agreement, signifies knowledge and agreement with the provisions of the Kansas Criminal History Records Information Plan.

   2. Agency will disseminate information - including confirmation of the existence or non-existence of records - only to: (i) Kansas criminal justice agencies that have signed a Kansas User Agreement; (ii) other criminal justice agencies that have signed comparable agreements; or (iii) non-criminal justice agencies and individuals that have an approved Access Request and Non-Disclosure Agreement.

   3. Agency shall not furnish to another crimial justice agency information from its own files of a class maintained by the central repository without first querying the central repository for the most recent information; provided this section shall not apply to: (i) automated access if the central repository notifies Agency that it is technically incapable of responding; (ii) non-automated access if the response time is more than 24 hours; or, (iii) secondary dissemination of record information received within the previous 48 hours.

DISSEMINATION LOG

All dissemination of CHRI must be recorded in a dissemination log. Logs will provide the basis for audit and notification of agencies when erroneous CHRI has been disseminated.

The dissemination log sheet (612D) included at the end of this section should be maintained in a log book. Instructions on its completion are also included following the sample log. The sample provided is approrpriate for agencies having a small volume of disseminations. Agencies having a substantial volume of disseminations should maintain a log on each case jacket as well as the chronological log shown.

IV. INDIVIDUAL RIGHT TO ACCESS

It has always been the practice of the State of Kansas to allow an individual to review his own criminal history records and challenge their accuracy. While the State is currently in compliance with the intent of Federal regulations, no specific policy and procedures existed previously. One purpose of this manual is to promulgate Uniform Statewide policies and procedures for access and challenge of CHRI records. Section IV of this manual contains detailed procedures and example forms for access, review and challenge of CHRI records. The following is a brief summary.

VERIFICATION OF IDENTIFICATION

In the State of Kansas, the only acceptable means of identification for purposes of access and inspection are fingerprints or visual recognition attested to by the criminal justice agency handling the inquiry, or a written statement made on oath before a notary public or other person authorized to administer oaths.

If uncertainty exists, however, about the identity of the requestor, a fingerprint card submission may be required for access.

REGULATIONS AND RESTRICTIONS

An individual has the right to review any CHRI data maintained about him at any criminal justice agency. An individual cannot place undue burden on the criminal justice agency, nor can the agency make it unnecessarily difficult for the person to gain access to records. Agencies have the right to establish reasonable hours for review. The time periods should total no less than twenty hours per week, scheduled during normal working hours of clerical or support staff. The KBI hours are from 9:00 a.m. to Noon and 1 p.m. to 4 p.m. Monday through Friday.

KBI is the central State repository and, as such, maintains a complete CHRI system. The other criminal justice agencies throughout the State may only have a part of the total criminal history. Therefore, it is advisable for an individual to review his or her record maintained by the KBI.

An individual should contact KBI Headquarters or one of its regional offices to request access. However, if the individual cannot appear at one of these locations because of physical handicap, remoteness of residence, or incarceration, he should contact the closest sheriff's office or correctional officer for assistance.

The individual's right to review extends only to CHRI data concerning him. The following demonstrate the restrictions on the review by individual of CHRI data.

- He is entitled to review information that records essentially that fact, date, and results of each formal stage of the criminal justice process through which he passed to ensure that all such steps are completely and accurately recorded.

- He is not entitled to review intelligence and investigative information.

- He is not entitled to review substantive information compiled about him by criminal justice agencies, as distinguished from a record of his movements through the agency.

- He is entitled to review the recordation of his admission to bail -- but, he is not entitled to the bail report.

- He is entitled to review the recordation of his sentencing -- but, he is not entitled to the presentence report.

- He is entitled to review the recordation of his admission to correctional institutions -- but, he is not entitled to medical records and other records of treatment.

CHALLENGE AND APPEAL

The federal regulations state that "a copy of the record should ordinarily be given when it is clearly established that it is necessary for the purpose of challenge." The fee should not exceed actual costs for making the copy (including labor and material cost). The maximum fee is $10.00.

If the individual feels that an error exists in the CHRI, a formal challenge may be filed.

In Kansas, the individual submits his challenge to the head of the agency who has custody of the information in dispute. The individual is notified of the results within thirty (30) days of the date of his challenge. If the challenge is denied, the individual is entitled to appeal the decision.

Appeals in the State of Kansas must be submitted in writing and include information contained in the initital challenge plus any additional facts in support of the case.

The appeal is submitted to the Kansas Bureau of Investigation (KBI) who shall notify the individual of the ruling on the appeal within thirty (30) days. If the ruling is adverse the individual may seek review through the Attorney General's Office or the state's court system.

CORRECTION PROCESS

If the individual's appeal is sustained, the agency making the requested corrections to the records informs all other criminal justice agencies to whom the disputed records were given. In addition, the individual is given, upon request, a list of all of the non-criminal justice agencies known to have received the incorrect information. This enables the individual to correct the erroneous information given to the non-criminal justice agencies.

IV. INDIVIDUAL RIGHT TO ACCESS

This section describes the procedures pertaining to an individual's right to access and review the criminal history records maintained about him and to challenge the accuracy and completeness of such information. Specifically, this section covers the six steps to gain access to CHRI and review, initiate a challenge and administrative review and provide for the dissemination of corrected information. Each step is discussed separately in sections appropriately titled as follows:

IV.1 Verification of Identity
IV.2 Method of Review
IV.3 Obtaining a Copy
IV.4 Challenging a Record
IV.5 Administrative Review
IV.6 Notification of Error

Four forms, Request for Review (611A), Challenge of Criminal History Records Information (611B), Request for Administrative Review (611C), and Notification or Error (611D) which support steps 2, 4, 5, and 6 are discussed in the narrative. Samples of these forms and accompanying instructions where necessary at the end of this section.

IV.1 VERIFICATION OF IDENTITY

In the State of Kansas, the only satisfactory methods of identification for the purposes of access, review, and challenge are: (1) fingerprint or visual recognition attested to by the criminal justice agency handling the inquiry; or (2) a written statement made on oath before a notary public or other person authorized to administer oaths.

IV.2 METHOD OF REVIEW

The federal regulations require that CHRI be available for individual review without undue burden on the criminal justice agency or the individual. As the central repository, the KBI maintains a complete criminal history record. Therefore, it is advisable for the individual to review his or her record maintained by the KBI. An individual should contact KBI Headquarters or one of its regional offices to request access. Records may be reviewed between the hours of 9am and noon, and 1pm and 4pm on regular working days.

If an individual is unable because of a physical handicap, remoteness of his or her residence, or incarceration, to appear at KBI Headquarters or one of its regional offices, he or she should contact the closest sheriff's office or a correctional officer for assistance.

A Request For Review statement is required of each individual seeking access to his CHRI record. A sample Request For Review (611A) is at the end of this section.

IV.3 OBTAINING A COPY

The federal regulations state that "a copy of the record should ordinarily only be given when it is clearly established that it is necessary for the purpose of challenge." A fee may be charged for making the copy. It shall no exceed $10.00 nor be less than $3.00.

IV.4 CHALLENGING A RECORD

An individual may challenge the accuracy or completeness of his record. The individual is required to give a correct version of his record and explain why he believes his version to be correct.

A sample Challenge of Criminal History Record (611B) and instructions for its completion are at the end of this section.

IV.5 ADMINISTRATIVE REVIEW

An individual wishing to appeal a challenge decision must submit copies of the forms entitled Challenge of Criminal History Record and a Request for Administrative Review of Challenged Criminal History Records Information to the head of the agency who has custody of the information in dispute (normally the KBI). The individual will be notified within thirty (30) days of the date of his challenge, of the results of his challenge. If the challenge is denied, the individual is entitled to appeal the decision.

IV.6 NOTIFICATION OF ERROR

If, after a Challenge or Administrative Review, it is determined that the CHRI in question is erroneous, the Agency maintaining the CHRI must send a Notification of Error (611D) to every other criminal justice agency having copies of the record. This Notification of Error identifies the incorrect CHRI and provides the corrected entry. A sample Notification of Error and instructions for its completion are at the end of this section.

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	15A.040	X	
2. Privacy and Security			
3. Dissemination Regulations	17.150	X	
4. Inspection	17.150 61.880 61.884	X X X	
5. Challenge			
6. Judicial Review	17.150	X	
7. Purge: Non-Conviction			
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete	17.110 17.147 17.150	X X X	
15. Dedicate			
16. Civil Remedy	61.882	X	
17. Criminal Penalty	17.157	X	
18. Public Records	61.870	X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination	17.150	X	
22. Security			
23. Transaction Logs			
24. Train Employees	15.330 15A.070	X X	
25. List Systems			
26. F.O.I. Including CJ	61-878	X	
27. F.O.I. Excluding CJ	61-878	X	

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	15-575 15.1201	X X	
2. Privacy and Security			
3. Dissemination Regulations	15.574.12 15.577 15.581.10 Reg. 17-3:6	X X X	X
4. Inspection	Reg. 17-3:3		
5. Challenge	Reg. 17-3:4		X
6. Judicial Review	Reg. 17-3:4		X
7. Purge: Non-Conviction	15-581-8 44-9		
8. Purge: Conviction	15.581-8	X	
9. Seal: Non-Conviction	44-9	X	
10. Seal: Conviction			
11. Remove Disqualification	44-9	X	
12. Deny CJ Record			
13. Research Access	15-574.12 15-580	X	
14. Accurate & Complete	15.578 15.581.2	X X	
15. Dedicate			
16. Civil Remedy	Reg. 17-3:1		
17. Criminal Penalty	15-581 15-581.21 44-37	X X X	
18. Public Records	44-1	X	
19. Separate Files	Reg. 17-3:9		X
20. Intelligence Collection			
21. Intelligence Dissemination	44-3	X	
22. Security	15-577 Reg. 17-3:8	X	X
23. Transaction Logs	Reg. 17-3:6		X
24. Train Employees	Reg. 17-3:10		X
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ	44-3	X	

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

202-S-COF

BLANK PAGE

Louisiana Privacy and Security

Regulations

Table of Contents and Subject Index

Regulation	Title	Page
	Preface	1
LAC 1-18:1	Purpose, Scope and Definitions	2
LAC 1-18:2	User's Agreement	8
LAC 1-18:3	Individual Rights of Access to Automated and Manual Criminal History Record Information	9
LAC 1-18:4	Individual Right to Administrative Review of the Content, Completeness or Accuracy of Individual Criminal History Record Information	13
LAC 1-18:5	Completeness and Accuracy	17
LAC 1-18:6	Dissemination and Corrections Records & the Maintenance of Logs	18
LAC 1-18:7	Audits and Quality Control	21
LAC 1-18:8	Security of Criminal History Information	23
LAC 1-18:9	Segregation of Computerized Files and their Linkage to Intelligence Files	25
LAC 1-18:10	Training of System Personnel	27

LOUISIANA

PREFACE

These Regulations governing the Privacy and Security of Criminal History Record Information in the State of Louisiana are effective after November 30, 1977. Full implementation is required by March 1, 1978.

The Regulations were drafted by the Privacy and Security Steering Committee of the Louisiana Criminal Justice Information System Advisory Board and members of the LCJIS Staff in accordance with a Federal and State Executive Mandate to the Louisiana Commission on Law Enforcement. The Commission approved the Regulations on October 26, 1977.

Because the Commission has been transferred to the Office of the Governor from the Department of Public Safety, it has been necessary to change the numerical designators of the Regulations and all references and citations thereto in the guidelines to "1-18: __" from "17-3: __". Subparagraph numbers are not affected. Additionally, Acts 313 and 309 of the 1978 Regular Legislature have necessitated a revision to LAC 1-18:6 (formerly 17-3:6), Dissemination and Corrections Records and the Maintenance of Logs. Notice of Intent to issue the revised regulations was published in the September 20, 1978 edition of the State Register. The Commission held a public hearing concerning the proposed change on September 27, 1978 and adopted the revised regulation in plenary session after October 25, 1978.

A separate set of guidelines and implementating instructions has also been published. These should provide significant assistance in understanding and adapting the Regulations to local needs and peculiarities. Questions concerning the Regulations or guidelines may be addressed to:

Louisiana Criminal Justice Information System
Office of Management and Planning
1885 Wooddale Boulevard, Suite 502
Baton Rouge, Louisiana 70806
Telephone: (504)925-4451/4454

LOUISIANA COMMISSION ON LAW ENFORCEMENT

AND

ADMINISTRATION OF CRIMINAL JUSTICE

LOUISIANA PRIVACY AND SECURITY REGULATION
LAC 1-18:1

Purpose and Scope

IN KEEPING with Congressional findings that the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information:

RECOGNIZING that to the extent that the maintenance of personal information is necessary for the efficient functioning of the Government, it is the moral and legal obligation of the Government to assure that the personal information maintained is, to the maximum extent feasible, complete and accurate;

BEING CONVINCED that it is of utmost importance that the integrity of personal information records be zealously protected;

RECOGNIZING that the increasing use of computers and sophisticated information technology, while essential to the operations of Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;

REALIZING that opportunities for an individual to secure employment, insurance, credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems:

ACKNOWLEDGING that the right to privacy is a personal and fundamental right protected by the Constitution of the United States;

RESPONDING to the authority granted in 42 United States Code 3701, et. seq.; 28 United States Code 534; 28 Code of Federal Regulations, Chapter I, Section 20; Louisiana Revised Statutes 15: 575 et. seq.; Louisiana Revised Statutes 49:951 et. seq.; and Executive Designation dated November 14, 1975; and

ACTING with the intent of protecting and furthering the interests of the citizens of the State of Louisiana, the Privacy and Security Committee of the Criminal Justice Information System Division of the Louisiana Commission on Law Enforcement and Administration of Criminal Justice does hereby issue these PRIVACY AND SECURITY REGULATIONS for the following purposes, and with the following scope and limitations:

PURPOSE

It is the purpose of these regulations to provide safeguards for an individual against an invasion of his personal privacy, and to promote, to the maximum extent feasible, the adoption of procedures to ensure the completeness, accuracy, and integrity of criminal history record information collected, maintained and disseminated by criminal justice agencies. This will be accomplished by requiring those agencies affected to: permit an individual to determine what

criminal history record information pertaining to him is collected, maintained, used, or disseminated by such agencies; permit an individual to gain access to criminal history record information pertaining to him in the records of affected agencies, to have a copy made of all or any portion thereof, and to correct or amend such records; and collect, maintain, use, or disseminate any record of criminal history information in a manner that assures that such action is for a lawful purpose, that the informatin is current and accurate for its intended use and that adequate safeguards are provided to prevent the misuse or unauthorized alteration or destruction of such information.

AGENCIES COVERED BY REGULATION

1. These regulations apply to all criminal justice agencies orgainzed under the Constitution or laws of the State of Louisiana which were awarded Law Enforcement Assistance Administration monies after July 1, 1973, for manual or automated systems which collect, store, or disseminate criminal history record information. The regulations do not directly apply to agencies which have received LEAA funds for general purposes other than the collection, storage or dissemination of criminal history record information. For example: an agency receiving funds to implement and operate automated non-criminal history record information systems (e.g., personnel, resource allocation, performance evaluation) would not by such funding be included under these regulations.

2. All criminal justice agencies organized under the Constitution or laws of the State of Louisiana which are or become signatories to a user's agreement. In such instances, the user's agreement shall control the extent to which these regulations are applicable.

3. Nothing contained in any of these Privacy and Security Regulations shall be construed to reduce, eliminate, or otherwise adversely affect any rights which individuals may have under any existing Louisiana law, court decision, or administrative rule.

RECORDS COVERED BY THESE REGULATIONS

4. These regulations apply to criminal history record information, as defined in LCLE-PS Regulation LAC 1-18:1.10. The following types of record information that might contain or otherwise be included within the definition of "criminal history record information" are specifically excluded:

   A. Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons.

   B. Original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public, if such records are accessed solely on a chronological basis.

   C. Court records of public judicial proceedings.

   D. Published court or administrative opinions.

   E. Public judicial, administrative or legislative proceedings.

   F. Records of traffic offenses maintained by state departments of transportation, motor vehicles or the equivalent thereof for the purposes of regulating the issuance, suspension, revocation, or renewal of driver's, pilot's or other operator's licenses.

G. Announcements of executive clemency.

H. Juvenile records.

I. Any other specific exemptions as may from time to time be provided by Federal Regulations, State Statute or which may be particularly specified in any of these Regulations.

EFFECTIVE DATE OF REGULATIONS

5. These Regulations shall be effective after November 30, 1977.

PENALTIES FOR VIOLATING THESE REGULATIONS

6. Under Federal law, an affected agency which wilfully and knowingly violates these Regulations may be subject to termination of funds made available by the Law Enforcement Assistance Administration, and a $10,000 fine. Additionally, future eligibility for receipt of Law Enforcement Assistance Administration funds may be suspended until the violating agency furnishes proof of compliance with these Regulations.

7. Under Louisiana law (L. R. S. 15:575 et. seq.), an officer or official of a criminal justice agency may be subject to a fine between $50 and $500 for violating any rules or regulations issued by the Louisiana Criminal Justice Information System.

8. A violating agency may be barred from receiving information form the Central State Repository until such agency furnishes proof of compliance with these Regulations.

DEFINITIONS

9. "Criminal history record information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation or dissemination of criminal history record information.

10. "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system.

11. "Criminal justice agency" means only those public agencies at all levels of government which perform as their primary function activities relating to:

A. The apprehension, prosecution, adjudication, or rehabilitation of criminal offenders;

B. The collection and analysis of crime statistics pursuant to statutory authority, or

C. The collection, storage, processing dissemination, or usage of information originating from agencies described in LAC 1-18:1 of this regulation.

12. The "administration of criminal justice" means performance of any of the following activities: detention, detection, apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.

13. "Affected agency" means:

    A. Any criminal justice agency which was awarded Law Enforcement Assistance Administration monies after July 1,.1973, for manual or automated systems which collect, store, or disseminate criminal history record information, or

    B. Any criminal justice agency which is or becomes a signatory to a user's agreement, or

    C. Any non-criminal justice agency which is or becomes a signatory to a user's agreement.

14. "Primarily affected agency" means any criminal justice agency organized under the Constitution or Laws of the State of Louisiana which was awarded Law Enforcement Assistance Administration monies after July 1, 1973, for manual or automated systems which collect, store or disseminate criminal history record information.

15. "Secondarily affected agency" means:

    A. Any criminal justice agency organized under the Constitution or Laws of the State of Louisiana which is or becomes a signatory to a user's agreement, or

    B. Any non-criminal justice agency which is or becomes a signatory to a user's agreement.

16. "User's agreement" means a written agreement entered into by a certified criminal justice agency and/or a requesting non-criminal justice agency and/or a criminal justice agency that has not received LEAA funds for system support since July 1, 1973. The agreement shall specify the basis of eligibility for receipt of criminal history records, and an acknowledgement by the recipient agency that it is subject to the terms and conditions of the Louisiana Commission on Law Enforcement Privacy and Security Regulations.

17. "Disposition" means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination in the proceedings; or information disclosing that proceedings have been indefinitely postponed. Dispositions shall include, but not be limited to: acquittal, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequir, no paper, nolo contendere plea, convicted, youthful offender determination, deceased, deferred disposition, dismissed - civil action, found insane, found mentally incompetent, pardoned, probation before

conviction, sentence commuted, adjudication withheld, mistrial - defendant discharged, placed on probation, paroled, or released from correctional supervision.

18. "Statute" means an Act of Congress or State Legislature or a provision of the Constitution of the United States or of a state.

19. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

20. An "executive order" means an order of the President of the United States or the Chief Executive of a state which has the force of law and which is published in a manner permitting regular public access thereto.

21. "Direct access" means having the authority to access the criminal history record data base, whether by manual or automated methods.

22. "Dissemination" means the release or transmission of criminal history record information by an agency to another agency or individual by oral, written or electronic methods.

23. "Dissemination Log" means an automated or manual record of information relating to the individual or agency to which criminal history record information has been disseminated. This record should contain the following data elements: a tracking, serial, or identification number, the agency or individual to whom CHRI is released, the address of the agency or individual, the date of release or notification, the individual to whom the information relates, the items of information released and how furnished, the original entry or correction, and the name of the releasing official.

24. "Central State Repository" means that collection of criminal history record information within the Louisiana Department of Public Safety, which is jointly collected, stored, and managed pursuant to mutual agreement between the Division of State Police, Bureau of Criminal Identification and the Louisiana Commission on Law Enforcement, Criminal Justice Information System Division.

25. "Direct Access" means individual access to personal criminal history record information contained in the manual or automated files of an affected criminal justice agency, excepting the Central State Repository, when such access is sought under the provisions of LAC 1-18:3.3, and the individual requesting access or his personal representative is physically present at the place where the records are kept or at the office of the custodian of the record sought.

26. "Eligible Non-Criminal Justice Agency" means a non-criminal justice agency, individual, or individuals having:

    A. Official authority, pursuant to a statute, executive order, administrativ rule, or court order; or

    B. Formal authority, pursuant to a written agreement with a criminal justice agency, to perform a service or function within the scope of the legitima activities of a criminal justice agency.

27. "Personal Representative" means any person, including, but not limited to legal counsel, who possesses a sworn authorization empowering him to represent an individual in the viewing or challenging of the authorizing individual's criminal history record information.

LOUISIANA PRIVACY AND SECURITY REGULATION
LAC 1-18:2

User's Agreement

1. It is the purpose of this regulation to insure state-wide compliance with Privacy and Security Regulations by requiring all recipients of Criminal History Record Informaiton from primarily affected agencies to sign User's Agreements, and to provide for the minimum terms and conditions of such User's Agreements.

DUTY OF PRIMARILY AFFECTED AGENCIES TO REQUIRE USER'S AGREEMENT

2. Every primarily affected agency, excluding official custodians of court records, shall, prior to disseminating criminal history record information to any criminal justice agency which is not otherwise bound by the Louisiana Privacy and Security Regulations, require such an agency to sign a User's Agreement, provided that upon presentation of proof that it is already a signatory to a valid User's Agreement, the information requesting agency may not be required to sign an additional User's Agreement.

3. Every primarily affected agency, excluding official custodians of court records, shall, prior to disseminating criminal history record information to an eligible non-criminal justice agency which is not otherwise bound by the Louisiana Privacy and Security Regulations, require such an agency to sign a User's Agreement.

4. An eligible non-criminal justice agency, for purposes of this part, shall constitute every non-criminal justice agency receiving access to criminal history records on a regular and recurring basis or on any basis other than the established procedures under the Louisiana Public Records Law.

5. Whenever a primarily affected agency, excluding official custodians of court records, signs a User's Agreement with an otherwise non-affected agency, the primarily affected agency shall immediately forward a copy of the signed User's Agreement to the Privacy and Security Committee. Copies of all User's Agreements shall be kept on file by the signatory agencies, and shall be made available for public inspection upon demand.

MANDATORY FORM OF USER'S AGREEMENTS

6. Every primarily affected agency or secondarily affected agency, excluding courts, which enters into an agreement permitting an eligible agency access to criminal history record information shall employ LCLE - Privacy and Security Form No. 7 for the purpose of fulfilling the obligation imposed by this regulation.

LOUISIANA

LOUISIANA PRIVACY AND SECURITY REGULATIONS
LAC 1-18:3

Individual Rights of Access to Automated and Manual Criminal History Record Information

1. It is the purpose of this regulation to extend individual rights of access to personal criminal history records beyond the rights currently provided by the Louisiana Public Record Act, as required by Federal Regulations, and to provide a mechanism for the implementation of those rights.

INDIVIDUAL RIGHT OF ACCESS TO CRIMINAL HISTORY RECORD INFORMATION

GENERAL RIGHT OF ACCESS

2. Each individual shall have the right to veiw the automated or manual criminal history record information which specifically relates to him, provided that only individual criminal history record information contained in the records of affected criminal justice agencies organized under the Constitutiton or laws of the State of Louisiana shall be accessible under this regulation.

INDIVIDUAL RIGHT TO DIRECT ACCESS

3. Any individual electing to seek direct access to his automated or manual personal criminal history record under this sub-part shall be granted such access upon fulfillment of the following conditions:

   A. The request for access must be in writing, and must be presented to an affected criminal justice agency.

   B. The request for access must be presented to the official having custody or control of the record sought, or a designated representative of such an official.

   C. The request for access must be presented during the regular office or working hours of the agency which has custody or control of the record.

   D. The request for access must be specific enough to enable the person charged with the care or custody of the record to reasonably ascertain the identity of the precise record sought. Specificity requirements may include fingerprints and such personal identifiers as may be essential to the location and retrieval of the record sought.

4. Individuals or their personal representatives seeking access under this sub-part shall be allowed to view the desired individual criminal history record within a reasonable time, not to exceed three (3) days, provided that where fingerprint classification is an essential prerequisite to the location and retrieval of the record sought, the time period within which viewing must be made possible may be extended by an additional thrity (30) days.

RIGHT TO QUERY CENTRAL STATE REPOSITORY

5. An individual wishing to view automated or manual criminal history record information specifically relating to himself and contained in the records of the Central State Repository shall be granted the right to view such records upon:

A. Submitting a written and signed request for viewing to an affected criminal justice agency, other than the Central State Repository, as outlined in LAC 1-18:3.8.

B. Submitting to fingerprinting for the purpose of positively establishing the identity of the requesting individual; and

C. Paying a ten ($10) dollar fee.

RIGHT TO QUERY OTHER AFFECTED AGENCIES

6. An individual wishing to view automated or manual criminal history record information specifically relating to himself and contained in the file of any affected criminal justice agency, other than the Central State Repository or the agency to which the request is submitted, may gain access to such information by:

A. Presenting a written and signed request for viewing to any affected agency, other than the Central State Repository, as outlined in LAC 1-18:3.8. Such request shall describe with reasonable particularity the records of which viewing is sought, and shall at a minimum state the places where it is believed such records may be kept, and the approximate date of occurrence of the incidents which form the subject of the records requested. Individuals or personal representatives seeking to query criminal justice agencies which maintain criminal history files accessible solely by fingerprint classification numbers must provide the querying agency with a set of fingerprints of the individual seeking access. LCLE-Privacy and Security Form No. 1 shall be used for this purpose;

B. Submitting any required positive identifiers, including fingerprints, for the purposes of establishing both the identity of the requesting individual and correctly locating the records sought;

C. Paying a five ($5) dollar fee for each affected criminal justice agency to be queried. An additional five ($5) dollar fee may be levied by the querying agency for each query forwarded.

RIGHT EXERCISED BY PERSONAL REPRESENTATIVE

7. When criminal history record information is requested by a personal representative under LAC 1-18:3.3 through LAC 1-18:3.6, the representative must present positive proof of the identity of the individual actually involved as well as a sworn authorization from the involved individual. Positive proof of identity in this sub-section shall be understood to mean fingerprints. Upon presentation of the authorization and positive identifier, the representative shall be permitted to request, examine, and/or challenge the criminal history record information specifically relating to the involved individual.

WHERE TO INITIATE QUERY

8. Queries directed to any criminal justice agency shall be launched from any affected sheriff's office or police department. In the parish of Orleans, individuals shall initiate queries through the New Orleans Police Department.

CENTRAL STATE REPOSITORY-TIME FOR VIEWING, COPIES OF RECORD

9. If the information requested by the individual must be obtained from the Central State Repository, the CSR shall forward the information to the requesting agency within forty-five (45) days of receipt of the request, and the requesting agency shall permit the viewing of the information within a reasonable time after receipt. The viewing individual may make a written summary of the information viewed, and may take with him such a summary. A copy of the record obtained from the Central State Repository shall be furnished to the individual upon request. Such copy should be prominently marked or stamped to indicate that the copy is for review and challenge only and that any other use thereof would be a violation of 42 United States Code Section 3771.

DUTIES OF AFFECTED CRIMINAL JUSTICE AGENCIES

10. Every affected criminal justice agency shall post a public notice informing individuals of their right to access and to administratively challenge the completeness or accuracy of their individual criminal history records. Additionally, every individual seeking to avail himself of the querying procedures set forth in this regulation shall be provided with a list of all affected agencies, and informed of the significance of querying a non-affected agency.

11. Every affected criminal justice agency which has custody of, control over, or access to automated or manual individual criminal history record information shall make available facilities and personnel necessary for such viewing, and shall in all respects maintain a cooperative attitude toward individuals requesting viewing. Viewing shall occur only within the facilities of a criminal justice agency, and only under the supervision and in the presence of a designated employee or agent of a criminal justice agency.

12. Every affected criminal justice agency shall, in every instance, diligently seek to provide the information requested. Every out-of-parish criminal justice agency listed on the request for viewing shall be contacted by mail, communication device, or personally within seven (7) days of receipt of the request for viewing. Five dollars ($5) shall be assessed for each agency queried by the agency to which the individual submits his request, and shall be forwarded to each queried agency along with the request for viewing. An additional five dollar ($5) fee may be levied by the querying agency for every query forwarded. Querying agencies shall provide positive identifiers in accordance with LAC 1-18:3.6.

13. Every affected criminal justice agency which receives a request for information must make every effort to locate the information requested, and shall in any event forward a reply to the requesting agency within seven (7) normal working days of receipt of the request, except as provided for requests to the Central State Repository. In such instances where the responding agency maintains criminal history record files accessible solely by fingerprint classification numbers, the response time may be extended up to a maximum of thirty (30) days to allow for the classification of the fingerprints accompanying the query. Such classification may be performed by the responding agency or by the Central State Repository.

DUTY TO FINGERPRINT, CENTRAL STATE REPOSITORY FEE

14. Every affected sheriff's office or police department shall fingerprint individuals requesting that the Central State Repository be queried. In

such instances where an authorized representative is presenting a query to the Central State Repository on behalf of an individual, the representative shall supply at least two (2) sets of the represented individual's fingerprints on standard fingerprint cards. The fee charged for querying the Central State Repository and supplying a copy of the results of such query shall be ten ($10) dollars. Five ($5) dollars of this amount shall be forwarded to the Central State Repository along with the query, and the remaining five ($5) dollars shall be placed in the treasury of the criminal justice agency to which the individual submits the request for viewing.

TIME OF VIEWING

15. Individual viewing may, at the discretion of each criminal justice agency, be limited to ordinary daylight business hours.

RECORDS, CERTIFICATION STATEMENT

16. A record of each individual viewing shall be maintained by each affected criminal justice agency by the completion and preservation of LCLE - Privacy and Security Form No. 2. Each such form shall be completed and signed by the supervisory employee or agent present at the review. The reviewing individual shall be required to certify by his signature that he has viewed the criminal history record information requested.

LOUISIANA PRIVACY AND SECURITY REGULATION
LAC 1-18:4

Individual Right to Administrative
Review of the Content, Completeness
or Accuracy of Individual Criminal
History Record Information

1. It is the purpose of this regulation to provide a means for adminstrative challenge, and ultimate correction of incomplete or inaccurate individual criminal history records.

INDIVIDUAL RIGHT TO ADMINSTRATIVE REVIEW

INDIVIDUAL RIGHT TO CHALLENGE

2. Each viewing individual shall have the right to challenge and request correction of the content, completeness, or accuracy of his individual criminal history record. Each individual shall be informed at the time of viewing of his rights of challenge under this regulation. Individuals shall have a right of adminstrative appeal under this regulation to seek redress for the denial of rights granted by any of these Regulations.

EXCLUSIVE MEANS OF CHALLENGE, COURT RECORDS EXCEPTED

3. This regulation provides the exclusive means for initial challenge of the content, completeness, or accuracy of individual criminal history record information, provided that where the individual criminal history record information under challenge originated from any file, automated or manual, maintained by the judiciary for the purpose of recording process and results of public court proceedings, this regulation shall not be applicable. In the instance last provided for, the sole formal means of challenge or correction shall be a civil suit filed in a state or federal district court.

INITIATING THE CHALLENGE

4. If after viewing his individual criminal history record, the individual wishes to challenge or request correction of such record, he may do so by submitting to the criminal justice agency which originated the challenged entries LCLE-Privacy and Security Form No. 3, a complaint which shall contain particularlized written exceptions to the criminal history record's contents, completeness, or accuracy. The complaint shall include an affirmance, signed by the individual or his legal representative, that the exceptions are made in good faith and are true to the best of the affiant's knowledge, information and belief. A copy of the complaint shall be forwarded to the LCLE Privacy and Security Committee. If, subsequent to viewing, an individual who was not previously fingerprinted wishes to challenge or correct his record, he must submit to fingerprinting so that it can be absolutely assured that the challenging individual is the subject of the record which he seeks to challenge or correct.

LOCAL REVIEW OFFICERS, NOTICE OF AUDIT RESULTS

5. Within each affected criminal justice agency, a Review Officer shall be designated as the person responsible for receiving and processing complaints

received under LAC 1-18:4.4 above. Upon receipt of such complaints, each Review Officer shall, within 45 days, conduct an audit of the individual's criminal history record to determine the validity of the exceptions. The Privacy and Secuirty Committee and the challenging individual or his legal representative shall be informed in writing of the results of the audit within 15 days after such results are final. LCLE-Privacy and Security Form No. 4 shall be used for this purpose.

NOTICE OF ALTERATIONS OR ADDITIONS TO RECORDS

6. Should the audit referred to in sub-section LAC 1-18:4.5 disclose inaccuracies or omissions in the information, the criminal justice agency shall cause appropriate alterations or additions to be made to the information and shall cause notice of such alterations or additions to be given to LCLE, the individual involved, and to other criminal justice agencies or private organizations to which that individual's criminal history record information has been disseminated within the previous 90 days, and in every instance the Central State Repository shall be notified of the substance of the alteration or addition.

RIGHT TO APPEAL FROM DECISION OF LOCAL REVIEW OFFICER

7. If the criminal justice agency declines to modify or supplement the individual's criminal history record in whole or in part, the individual or his legal representative may require review of the criminal justice agency's decision by perfecting, within 30 days of the mailing of the audit results, an appeal to the LCLE Privacy and Security Committee. The Privacy and Security Committee shall appoint Hearing Officers to hear such appeals. Failure to timely perfect an appeal shall bar subsequent challenges of that portion of the individual criminal history record in controversy.

PERFECTING THE APPEAL

8. Appeals shall be perfected upon actual delivery to the Privacy and Security Committee of a petition for review. The petition for review shall be signed and in writing and shall include a concise statement of the alleged deficiencies or inaccuracies of the individual's criminal history record, shall state the date and result of any review by the criminal justice agency, and shall be accompanied by a sworn verification of the facts alleged in the petition for review. LCLE-Privacy and Security Form No. 5 may be used for perfecting the appeal.

NOTICE OF THE APPEAL, CONDUCT OF HEARING

9. Upon receipt of the petition for review, the Hearing Officer shall docket the case and notify the criminal justice agency and the individual or his legal representative of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing is to be held; the particular statutes, rules, and regulations involved; the nature of the matters asserted in the petition for appeal. Both the individual and the criminal justice agency shall have adequate opportunity to respond and present evidence on all issues of fact involved and argument on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

RULES OF PROCEDURE

10. Rules of evidence, oaths and affirmations, subpoenas, depositions and discovery, confidential priviledged information, examination of evidence by agency, decisions and order, re-hearings, ex parte consultations and recusations, judicial review and other such matters shall be governed by the provisions of the Louisiana Adminstrative Procedure Act, L. R. S. 49:951 et. seq.

RECORD OF THE PROCEEDINGS

11. A record of all proceedings shall be preserved and provided as required by L. R. S. 49:955(E) and (F).

NOTICE OF DECISIONS

12. Parties shall be entitled to notice of the final decision of the Hearing Officer. LCLE-Privacy and Security Form No. 6 may be used by the Hearing Officer to direct such notice to the parties.

PETITION FOR REVIEW OF DECISION OF HEARING OFFICER

13. If, after receiving notice of the decision or order of the Hearing Officer, the individual or the involved criminal justice agency is reasonably convinced that grounds exist in the record for reversal or modification of the Hearing Officer's decision or order, a petition for reveiw accompanied by a bond (set by the Hearing Officer) sufficient to pay the cost of transcribing the record, may be submitted within 30 days to the Privacy and Security Committee. Failure to so petition shall bar subsequent challenges of that portion of the individual criminal history record contested.

REVIEW BY PRIVACY AND SECURITY COMMITTEE

14. If the petition for review, accompanied by adequate bond for transcription costs, is timely submitted to the Privacy and Security Committee, copies of the petition for review shall be sent to th ee members of the Privacy and Security Committee, such members being selected on a rotating basis. Within 14 days of submission of the petition for review, the same three members shall decide by personal or telephonic vote whether full review by the Privacy and Security Committee will be granted. If full review is denied, the petitioning party may pursue rights of judicial review granted under L. R. S. 49:964. If full review is granted, the record shall be transcribed and circulated among at least seven (7) members of the Privacy and Security Committee. A time and a date, within 30 days of transcription of the record, shall be set for the presentation of written or oral argument to a quorum of at least five (5) of the seven (7) Privacy and Security members who have read the transcribed record.

RULES OF PROCEDURE, NOTICE OF DECISIONS

15. Decisions, orders, rehearings, and appeals from decisions or orders of the Privacy and Security Committee shall be in accordance with subsections LAC 1-18:4.10 and LAC 1-18:4.12.

WRITS OF MANDAMUS AND INJUNCTION AUTHORIZED

16. The Privacy and Security Committee is hereby authorized to seek writs of mandamus or injunction to enforce final, non-appealable orders and decisions of the Committee and the Hearing Officers.

BURDEN OF PROOF

17. Individual criminal history records challenged under the provisions of this regulation shall be deemed to be accurate, complete, and valid until otherwise ordered.

DUTY TO INFORM INDIVIDUAL OF DISSEMINATION OF INCORRECT DATA

18. Upon final determination that the content of an individual criminal history record is inaccurate or incomplete, the affected agency which originated the inaccurate or incomplete entry shall provide the individual or his legal representative with a list of the non-criminal justice agencies to which the inaccurate or incomplete criminal history record information has been disseminated within a ninety (90) day period immediately preceding the final disposition of the challenge.

LOUISIANA PRIVACY AND SECURITY REGULATION
LAC 1-18:5

Completeness and Accuracy

1. It is the purpose of this regulation to establish minimum standards for reporting criminal dispositions and updating criminal history records to include such dispositions. It is intended that this regulation supplement and reinforce the LCJIS Complete Disposition Reporting System. Because inaccurate or incomplete criminal history record information presents a serious danger to individual rights of privacy and due process, every criminal justice agency should strive to maintain accurate, up-to-date criminal history records.

REPORTING DISPOSITION DATA

2. Every affected agency shall report dispositions (as defined in LAC 1-18:1.17) which occur as a result of a transaction initiated by such agency within ninety (90) days of the occurrence of the disposition. Dispositions shall be reported as required by the Louisiana Criminal Justice Information System.

CRIMINAL HISTORY RECORD INFORMATION

3. Every affected agency shall establish procedures for updating criminal history records using disposition data which shall be distributed by the Louisiana Criminal Justice Information System.

4. Every affected agency shall establish procedures providing for a minimal external search for a disposition prior to disseminating criminal history record information relative to a specific arrest or charge when it appears from the nature of the arrest or charge that a disposition should have occurred, and none is noted in the record.

MICROFILMED FROM BEST AVAILABLE COPY

LOUISIANA PRIVACY AND SECURITY REGULATION
LAC 1-18:6
Dissemination and Corrections Records and the Maintenance of Logs

1. It is the purpose of this regulation to provide direction and guidance concerning the control of dissemination and correction of criminal history record information (CHRI) to individuals or agencies as required by the Federal Regulations (Title 28), through the maintenance of certain logs, and to provide a vehicle for correcting erroneous information. Since dissemination records are viewed by the regulations as a key restraint on erroneous dissemination, a deterrent to the illegal use of information disseminated and a supporting document to quality assurance audit trails (LAC 1-18:7), the maintenance of logs is mandatory.

DISSEMINATION CONTROLS AND RESTRICTIONS

2. These regulations impose no restrictions on the dissemination of CHRI where the court transactions or dispositions have included a conviction or convictions. However, where CHRI contains non-conviction data, i.e. where records contain arrest data, citation, summons or bill(s) of information which have not resulted in a conviction or guilty plea, and acquittals; dismissals; information that a matter was not referred for prosecution, that the prosecutor has not commenced criminal proceedings, that proceedings have been indefinitely postponed; and records of arrest unaccompanied by disposition that are more than one year old and in which no prosecution is actively pending, these regulations now impose restrictions against dissemination of that portion of CHRI containing non-conviction data to non-criminal justice agencies not otherwise permitted access to such information by state statute (3B) and (5).

3. Non-conviction data may only be disseminated to:

   A. Criminal justice agencies for criminal justice activity and employment.
   B. Public and private agencies authorized by state and federal statute, executive order, local ordinance or court decision. (See paragraph 5)
   C. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide criminal justice services. (e.g. Consultants)
   D. Individuals and agencies engaged in research, evaluative or statistical activities.

4. Nothing in this Regulation abrogates the right of individuals (or their authorized representatives) to access, review, challenge or appeal criminal history information about themselves as provided for in LAC 1-18:3 and LAC 1-18:4.

MICROFILMED FROM BEST AVAILABLE COPY

5. Upon application, the Central State Repository (Bureau of Criminal Identification) may furnish a copy of all information available pertaining to the identification and history of any person or persons of whom the Bureau has a record or any other necessary information to any federal, state, or local government regulatory, investigative, licensing or bonding agencies which may require fingerprinting, in connection with their authorized duties, functions and powers.

DISSEMINATION AND CORRECTIONS RECORDS REQUIREMENTS

DISSEMINATION LOGS

6. In order to maintain accountability over the full scale of collection, storage and dissemination of CHRI, dissemination transactions records in the form of a log shall be kept by each criminal justice agency. The logging is required both to support the audit process and as a means of correcting erroneous dissemination. Logs may be kept as shown on LCLE Privacy and Security Form No. 8 but must, as a minimum, contain the following data elements:

   A. A tracking, serial, or identification number in order to provide positive identification linkage between CHRI disseminated and the record from which extracted.
   B. Agency or individual to which or whom CHRI released.
   C. Address of agency or individual.
   D. Date of release or notification.
   E. Individual to whom information relates.
   F. Items of information released and how furnished (i.e., copy provided, written out by hand, mailed, teletype or computer terminal printout).
   G. Original entry or correction (indicate "O" or "C" as appropriate).
   H. Releasing official.

CORRECTION RECORDS

7. Since identification of agencies or individiuals receiving erroneous CHRI is possible from the dissemination log and since Federal Regulations require notification of each recipient of inaccurate or erroneous CHRI (unless it falls outside of the 90 day limit specified in LAC 1-18:4.6) a corrections record will also be kept using the dissemination log. The minimum data elements for a correction entry are essentially similar to those specified for a dissemination entry. The tracking or serial number will be identical to the identification number provided for the original information on the dissemination log. The log page number of the original entry will be placed next to the "C" in the "Original or Correction" column of the log in order to maintain audit trail continuity.

LOG MAINTENANCE AND CORRECTIONS DATA TRANSMITTAL PRESERVATION

8. All logs are to be preserved for a period of not less than one year from the earliest date of release of information or notification of correction. Logs will be made available for audit and verification of compliance with the Regulations by the Commission, the Privacy and Security Committee or their designated staff members at such time as they may require.

NO RECORD RESPONSE

9. When a response to an inquiry is "No Record" or essentially negative, no logging of the response is required.

CORRECTIONS DATA TRANSMITTAL

10. Corrections to records shall be forwarded in hardcopy form such as letter, teletype, or computer terminal printout within 14 days after determining erroneous information has been disseminated. If the original dissemination is older than 90 days and the 90 day record maintenance notification has been imposed, and a correction is indicated, the correction should be made but need not be transmitted, except to the Central State Repository.

LOUISIANA PRIVACY & SECURITY REGULATION
LAC 1-18:7

Audits and Quality Control

1. It is the purpose of this regulation to interpret the requirements of the Federal Regulations as they pertain to: (a) the quality of the information the criminal justice agencies collect, store and disseminate; and, (b) the systematic and annual audits to be performed in order to verify adherence to the Privacy and Security Regulations.

QUALITY CONTROL

PRIVACY CONSIDERATIONS

2. The quality of information which the criminal justice agencies collect and use is an important privacy consideration. Quality information issues usually fall into one or both of two categories; namely, completeness and/or accuracy. Achieving high quality record information is largely a matter of good procedures; it requires a rigorous, systematic approach to record-keeping and a high degree of cooperation among the participating agencies. Agencies shall therefore, institute procedures which implement these requirements.

COMPLETENESS AND ACCURACY

3. Agencies shall likewise develop written procedures which comply with the basic provisions of LAC 1-18:5.

AUDITS

4. There are basically two types of quality assurance audits required periodically. The systematic audit is required of an agency which collects, maintains and disseminates CHRI as a means of minimizing errors or ommissions in the completeness and accuracy of the records. This audit is actually a quality control mechanism and will usually be performed on a periodic and regular basis by the agency itself. In contrast, the annual audit is an examination by an outside agency of the extent to which an agency is complying with the Regulations.

5. The systematic audit refers to a combination of systems and procedures employed both to ensure, to the extent possible, completeness and to verify accuracy. The systematic audit is also an internal procedure which basically provides for a comparison between CHRI and source documents or reporting forms, as appropriate, in order to check accuracy and completeness. In addition, this audit provides for an inspection of an agency's systematic audit procedure in accordance with the guidelines furnished by the Louisiana Criminal Justice Information System (LCJIS) staff and utilizing LCLE-Privacy and Security Form No. 9 (Agency Systematic Audit Checkoff List).

6. The annual audit will be performed on a random sample of all affected agencies in the State. All affected agencies must fully cooperate in the conduct of the annual audit.

7. LCJIS shall audit, on a periodic basis, a random sampling of agencies to provide statistically significant examinations of the accuracy and completeness of data maintained and to verify adherence to the Regulations.

Sampling and detailed audit procedures will be as indicated in LCJIS furnished guidelines and implementing directives.

AGENCY RESPONSIBILITIES

8. The annual audit will be performed by members of the LCJIS staff who are familiar with the agencies and the requirements of the Regulations. Agencies to be audited will be given a minimum of 30 days written notice prior to an annual audit being conducted. On conclusion of the annual audit, the staff will give the agency an oral debriefing and subsequently, within 30 days, a written, formal critique highlighting deficiencies and recommending corrective action. Field agents making regular, subsequent visits will verify corrective action taken.

9. At the time of the audit, the audited agency will have ready to present to the audit team such documentation as may be required by LCJIS, including but not limited to:

   A. Evidence of procedural compliance including security,

   B. Copies of systematic audits performed,

   C. Source records as may be requested,

   D. Dissemination logs, and

   E. Right of access, appeals, and certification forms.

10. Audited agencies with serious deficiencies as indicated in the formal critique must correct these deficiencies and will render written, corrective action reports to LCJIS monthly until the deficiency is eliminated.

MICROFILMED FROM BEST AVAILABLE COPY

LOUISIANA PRIVACY AND SECURITY REGULATION
LAC 1-18:8

Security of Criminal History Information

1. It is the purpose of this regulation to establish minimum standards governing the achievement and maintenance of physical security, personnel security and programming security within agencies maintaining criminal history records.

PHYSICAL SECURITY

2. Affected agencies shall institute procedures for the protection of criminal history records from environmental hazards including fire, flood, and power failure. Appropriate measures may include: adequate fire detection and quenching systems, protection against water and smoke damage, fire resistant materials on walls and floors, air conditioning systems, emergency power sources and backup files.

3. Affected agencies shall adopt security procedures which limit access to criminal history files. These procedures may include use of guards, badges, keys, passwords, sign-in logs or similar controls. Facilities housing criminal history records shall be so designed and constructed as to reduce the possibility of physical damage to the records. Appropriate measures may include physical limitations on access, security storage for information media, adequate lighting, detection and warning devices, perimeter barriers, heavy-duty, non-exposed walls and closed circuit television.

PERSONNEL SECURITY

4. Applicants for employment and those presently employed in the maintenance of criminal history records shall consent to an investigation of their character, habits, previous employment, and other matters necessary to establish their good moral character, reputation and honesty. Giving false information shall disqualify an applicant from employment and subject a present employee to dismissal.

5. Investigations should be conducted in such a manner as to provide sufficient information to enable the appropriate officials to determine employability and fitness of persons entering sensitive positions. Investigations of applicants should be conducted on a pre-employment basis and the resulting reports used as a personnel selection device.

6. Systems personnel including terminal operators in remote locations, as well as programmers, computer operators, and others working at or near the central processor, shall be assigned appropriate security clearances and should have those clearances renewed periodically after investigation and review.

7. Each affected agency should prepare a security manual which delineates procedures for granting clearances for access to criminal history information as well as areas where criminal history data is maintained. Each person working with or having access to this information should know the contents of the manual.

SYSTEM DISCIPLINE

8. The management of each affected agency should establish sanctions for accidental or intentional violation of system security standards. Supervisory personnel should be delegated adequate authority and responsibility to enforce these standards.

9. Any violation of the provisions of these standards by any employee or officer of any public agency, in addition to any applicable criminal or civil penalties, shall be punished by the imposition of appropriate disciplinary measures.

10. Where any affected agency is found by the Louisiana Privacy and Securtty Committee to have willfully or repeatedly violated the requirements of this standard, the Committee may prohibit the dissemination of criminal history record information to that agency, for such periods and such conditions as the Committee deems appropriate.

PROGRAMMING SECURITY

11. There shall be a terminal identification code number for each remote terminal as a pre-condition for entering the files. Within each agency, terminal use shall be assigned to a limited and identified group of individuals. Each individual terminal user shall identify himself by a personal identification number or authorization code. The computer shall be programmed to log the identity of all users, the files accessed, and the date of access. This information shall be maintained for twelve (12) months. (See LAC 1-18:6.) Each remote terminal user shall establish a computerized or written log of terminal use, which shall be audited periodically.

12. Where a computer file may be accessed by more than one agency, system software shall ensure that each agency shall obtain only the data to which it is entitled. System hardware and software shall contain controls to ensure that each user with on-line direct terminal access can obtain only reports authorized for its use. System software shall be implemented to erase and clear core, buffers, mass storage, and peripheral equipment of data automatically whenever purging is required by these regulations. Duplicate computer files shall be created as a counter-measure for destruction of original files and all computer tapes or discs shall be locked in a safe storage area under the control of senior personnel. Secondary storage should be used for back-up.

13. Where criminal justice data is transmitted to a data center on reporting forms, the center shall establish procedures for destroying these forms after the data is entered in the computer. System software shall contain controls to ensure that each terminal is limited to the information it can input, modify, or cancel.

14. A monitor program shall be developed to report attempts to violate the system security software or files. Edit programs shall be created to periodically audit record alteration transactions.

MICROFILMED FROM BEST AVAILABLE COPY

LOUISIANA

LOUISIANA PRIVACY AND SECURITY REGULATION
LAC 1-18:9

Segretation of Computerized Files and their Linkage to Intelligence Files

1. It is the purpose of this regulation to establish minimum standards governing the maintenance of the security and integrity of computerized criminal history record information.

SEGREGATION OF COMPUTERIZED FILES

2. Data files and programs used by the criminal justice system for the collecton, maintenance, or dissemination of criminal history record information shall be under the management control of a criminal justice agency and shall be supervised and maintained in the following manner.

   A. Files shall be stored on the computer in such a manner that they cannot be modified, destroyed, accessed, changed, or overlaid in any fashion by non-criminal justice terminals.

   B. The agency employee in charge of computer operations shall write and install, or cause to have written and installed, a program that will prohibit inquiry, file updates or destruction from any terminal other than criminal justice system terminals which are so designated. The destruction of files shall be limited to specifically designated terminals under the management control of the criminal justice agency responsible for maintaining the files.

   C. The agency employee in charge of computer operations shall write and install, or cause to have written and installed, a program that will prohibit inquiry, file updates or destruction form any terminal other than criminal justice system terminals which are so designated terminals under the management control of the criminal justice agency responsible for maintaining the files.

   C. The agency employee in charge of computer operations shall write and install, or cause to have written and installed, a classified program to detect and store for classified output all accesses and all attempts to penetrate and all accesses of any criminal offender record information system, program or file. This program shall be available only to the agency control employee and his immediate assistant and the records of such program shall be kept continuously under maximum security conditions. No other persons, including staff and repair personnel, shall be permitted to know this program.

   D. Non-terminal access to criminal offender record information such as requests for tapes, file dumps, printouts, etc., shall be permitted only with approval of the criminal justice agency having management control of the data. The employee in charge of computer operations shall forward all such requests to the criminal justice agency employee responsible for maintaining systems and data security.

LINKAGE TO INTELLIGENCE FILES

3. Criminal history record files may be linked to intelligence files in such a manner that an intelligence inquiry from a criminal justice terminal can trigger a printout of the subject's criminal offender record information.

4. A criminal history record inquiry response shall not include information which indicates that an intelligence file exists.

LOUISIANA PRIVACY AND SECURITY REGULATIONS
LAC 1-18:10

Training of System Personnel

1. It is the purpose of this regulation to establish a training program whereby all personnel working with or having access to criminal history record information are made familiar with the substance and intent of the Louisiana Privacy and Security Regulations.

RESPONSIBILITY FOR STATE-WIDE IMPLEMENTATION

2. The Louisiana Criminal Justice Information System shall be primarily responsible for planning, coordinating, presenting, and approving the Privacy and Security Training Programs. The objective of the training program shall be to instruct key employees of affected agencies as to the substance and intent of the Louisiana Privacy and Security Regulations. Every affected agency shall, to the maximum extent possible, avail itself of such training as may be provided by LCJIS.

AGENCY RESPONSIBILITY FOR INTERNAL TRAINING PROGRAM

3. Every affected agency shall institute an internal training program to familiarize personnel with the proper use and control of criminal history record information. Each such program must contain provisions for specific instructional sessions on Louisiana Privacy and Security Regulation LAC 1-18:8 which establishes minimum security standards for criminal history record information. This training program would be primarily directed to employees who work with or have access to criminal history record information.

4. Each affected agency shall maintain a written record describing the training procedures employed by the agency and indicating the number of training meetings per year. This record shall be made available to LCJIS staff audit personnel during schedules annual audits.

BAILEY GRANT, CHAIRMAN
Louisiana Commission on Law
Enforcement and Administration of
Criminal Justice

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	25-1541 198-1669	X X	
2. Privacy and Security			
3. Dissemination Regulations	16-603 16-604 25-1631 Reg.	X X X	X
4. Inspection	16-606	X	
5. Challenge	16-606	X	
6. Judicial Review	16-606	X	
7. Purge: Non-Conviction			
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction	15-2161A	X	
11. Remove Disqualification	15-2161A	X	
12. Deny CJ Record			
13. Research Access	16-603	X	
14. Accurate & Complete	15-2161A 16-606 25-1542 25-1547	X X X X	
15. Dedicate			
16. Civil Remedy	25-1550	X	
17. Criminal Penalty	15-2161A 16-605	X X	
18. Public Records	1-401	X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination	16-604 16-606	X X	
22. Security	16-603	X	
23. Transaction Logs	16-607	X	
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ	1-401 16-602	X	
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

SUMMARY OF GUIDELINES ON PUBLIC ACCESS TO RECORDS OF LOCAL LAW ENFORCEMENT AGENCIES

This document is a summary of the guidelines promulgated by the Department of the Attorney General on public access to the records of local law enforcement agencies. A separate document will set forth a more detailed explanation of the guidelines, along with a discussion of the laws upon which they are based.

I. BACKGROUND

Maine has two laws which directly affect public access to records of law enforcement agencies. The first law, the Maine Freedom of Access Law, 1 M.R.S.A. §§401, et seq., generally establishes the State policy that the public has a right to know the business of public agencies and has the right of access to records collected and stored by those agencies. The second law, the Criminal History Information Act, 16 M.R.S.A. §§601 et seq., places certain limitations on dissemination of criminal history record information in the interest of protecting people's privacy.

The existence of these two laws and other laws providing for privacy of certain records, such as juvenile records, has created some understandable uncertainty among local law enforcement agencies as to what documents may be made public. The following suggested procedures are designed to aid in resolution of several policy objectives in Maine law. The policy objectives include:

1. The idea that the public has a right to know the business of public agencies and that needless nondisclosure of documents kept by public agencies creates mistrust of governmental processes. Trust of government action is particularly important in areas relating to arrest and criminal prosecution which directly affect people's most basic rights and create the most serious conterns where abuse is suspected. To the extent there is disclosure with regard to such procedures, concern about abuse and thus distrust of the system is minimized.

2. The idea that publicity should not compromise the judicial or enforcement processes. Consistent with avoidance of abuse of basic rights is the concept articulated by the Supreme Court in Sheppard v. Maxwell, 384 U.S. 333 (1965) that excessive and prejudicial pretrial publicity may corrupt the judicial processes with public pressure, particularly where the posture of the accused is not one which is publicly popular. This public policy, not inconsistent with the first, is articulated mainly in court decisions, not statutes, but those court decisions must, of necessity, govern conduct of local law enforcement agencies and state and local prosecutors in preparing cases for prosecution.

3. The idea that a person's right to privacy is best protected by nondisclosure of certain information. The Criminal History Information Act and laws relating to juvenile crimes articulate a policy that disclosure of certain information in criminal history records may unfairly prejudice a person's position in society, particularly where that person is a minor or where the person may not have been convicted of offenses with which he may have been charged. In such cases, the State Legislature has articulated the policy that the person's right of privacy dictates that stringent limitations be placed upon governmental disclosures.

II. STATUS OF POLICE RECORDS

The following is a general description of those local police records which normally should be available to the public and those records which normally are not publicly available. This description, necessarily brief, indicates the types of documents which should be made public and those which should remain private.

Documents which are public:

The relationship of the Freedom of Access Law, the Criminal History Information Act, and other laws leave a large number of documents available for public inspection. In stating that these documents are public, it must be emphasized that the Freedom of Access Law does not discriminate among members of the public. Thus, members of the press have no greater (or lesser) rights to review documents than any other person. Further, where public access is provided, a person need not demonstrate any "need to know" in order to have access to the public documents. A request to see the documents is all that is necessary to justify disclosure.

Local law enforcement agency records generally available to the public include:

- Records of arrests, which are filed chronologically;
- Police blotters and other chronologically organized logs;
- "Wanted" posters and fugitive lists circulated by law enforcement agencies;

- Written decisions of any court resulting from a public judicial proceeding;
- Records of civil violations, including traffic infractions;
- Petitions for and warrants of full and free pardons, conditional pardons, commutations, reprieves and amnesties;
- Statistical data which does not reveal the identity of individuals.

Documents which are not public:

Generally the following documents should not be made public because of protection of the Criminal History Information Act, the juvenile laws or other requirements:

- Intelligence files and files relating to investigations of criminal conduct;
- Names of informers;
- Juvenile records;
- Records relating to dismissal or acquittal of criminal charges or convictions where a full and free pardon has been granted;
- Records relating to convictions, guilty pleas or pleas of nolo contendere.

As indicated above, the availability of the listed documents is subject to the qualifications indicated in the "Guidelines" attached hereto.

III. PROCEDURES TO FACILITATE PUBLIC ACCESS

Currently local law enforcement agencies maintain many different types of record-keeping systems. Sometimes the nature of these record-keeping systems creates problems in public access because of a mixing of public and nonpublic data or for other reasons. The following are some suggested procedures to revise record-keeping practices to facilitate both public access to public documents and protection of those documents to which access is limited by statute:

1. Local law enforcement agencies should try to develop a uniform "arrest report for public access" which would be kept separate from all other unrelated kinds of uniform case reports (e.g., Me. Chief's Form 2) and all other information regarding a particular crime or a particular individual and would be available to the public. For reasons which will be explained later, these arrest reports for public access may be released only if they are compiled and organized chronologically; thus, at least one copy should be entered into a file or a book which

is organized in accordance with the order in which the records were prepared. Currently this Office is working with law enforcement agencies in development of a uniform arrest report for public access.

Such a report could include in critical part:

- The name and address of the person arrested;
- The name of the arresting officer;
- The date, time and place of the arrest;
- The title and statute number of the offense charged;
- A brief written description of the circumstances surrounding the arrest.

A working draft of such a report is included herein as an Appendix to this summary. (See "Appendix A")

2. Departments should attempt to keep separate files for adult arrest records for public access maintained chronologically (which are public) and for juvenile arrest records maintained chronologically (which are generally not public).

3. Similarly, arrest records for public access and other similar original records of entry compiled on a chronological basis should not be mixed with other types of case reports, investigative and intelligence files or documents disclosing the names of informers.

4. Local law enforcement agencies should maintain in addition to an "arrest report for public access", a blotter or similar chronologically organized log to which the public is afforded full access. At least one copy of the blotter should be entered into a file or a book which is organized in accordance with the order in which the blotters are prepared. The blotter provides the public with current information regarding the overall police activities of a given local law enforcement agency. Care must be taken to insure that confidential or privileged information should not be entered in the blotter.

5. Departments should develop specific procedures to facilitate public access so that a specific person on the department premises is responsible for providing access to records. Such a procedure is essential to eliminate confusion and uncertainty which may occur among uniformed officers and other department staff members as to who has responsibility for making documents available. It must be emphasized that these procedures should attempt to assure that records, by law made public, are readily available to anyone who requests to review them.

6. Departments should develop procedures for relatively prompt filing of arrest records for public access and other records which are public with the department headquarters.

The above procedures are suggested to facilitate public access, provide accountability so that members of the public can know who to contact and minimize disputes and difficulties which may arise regarding public access procedures.

October 11, 1978

Joseph E. Brennan

JOSEPH E. BRENNAN
Attorney General
State of Maine

DIRECTIONS

CONTROLLING COMPLETION AND USE OF ARREST REPORT FOR PUBLIC ACCESS

1. THE ARREST REPORT FOR PUBLIC ACCESS IS CREATED IN RESPONSE TO BOTH 16 M.R.S.A. §602(B) AND 1 M.R.S.A. §402(3).

2. THE ARREST REPORT FOR PUBLIC ACCESS SHALL BE USED IN EVERY INSTANCE IN WHICH THIS AGENCY MAKES AN ARREST OR, IN LIEU THEREOF, CAUSES A SUMMONS TO BE ISSUED, EXCEPT THAT NO SUCH REPORT SHALL BE PREPARED WHERE THE SUBJECT IS A JUVENILE (15 M.R.S.A. §3003(14)) INVOLVED WITH A JUVENILE CRIME (15 M.R.S.A. §3103(1) OR AN ADULT INVOLVED IN THE COMMISSION OF A JUVENILE CRIME PRIOR TO ATTAINING HIS 18TH BIRTHDAY (15 M.R.S.A. §3103(2)(D)).

3. THE ARREST REPORT FOR PUBLIC ACCESS IS AN ORIGINAL RECORD OF ENTRY WHICH IS TO BE FILED CHRONOLOGICALLY (NOT ALPHABETICALLY) WITH OTHER SUCH ARREST REPORTS FOR PUBLIC ACCESS IN FILES EXPRESSLY ALLOCATED FOR THAT PURPOSE IN THIS AGENCY.

4. THE ARREST REPORT FOR PUBLIC ACCESS SHALL BE COMPLETED IN CONFORMITY WITH THE FOLLOWING INSTRUCTIONS:

    1. DATE: date document is completed - numerically by month/day/year
    2. NAME: typed or printed name of the person arrested or summoned - last/first/middle
    3. AGE: date of birth of person arrested or summoned - numerically by month/day/year
    4. PLACE OF BIRTH: if United States, insert city or town and state; if the place is other than the United States, insert country
    5. ADDRESS: address of person arrested or summoned
    6. CHARGE(S): include both title and statutory reference
    7. WARRANT/SUMMONS: Check as appropriate
    8. DATE OF ARREST OR SUMMONS: numerically by month/day/year
    9. DATE TO APPEAR IN COURT: numerically by month/day/year
    10. COURT AND LOCATION: indicate District or Superior Court and give city or town
    11. CITIZENSHIP: if United States citizen, write "U.S.A."; if not United States citizen, write "alien"
    12. OCCUPATION: occupation of person arrested or summoned, whether or not currently employed
    13. POLICE OFFICER RESPONSIBLE: arresting officer or officer responsible for the criminal investigation; if to include the officer's name would endanger his life or physical safety, or that of his family, it shall not be included
    14. BAIL: if bailed write "bailed" and include date - numerically by month/day/year - and time - civilian not military time; if not bailed write "not bailed"

MICROFILMED FROM BEST AVAILABLE COPY

15. BAIL COMMISSIONER OR JUDGE: complete if person is bailed

16. IDENTITY OF VICTIM(S): victim names may be reflected except that

    (a) identities of victims badly injured or killed only after next of kin have been properly notified;

    (b) identity of a minor who has been the victim of a sexual offense under Title 17, chapter 93-B (§§2921 et seq.) or Title 17-A, chapter 11 (§§251 et seq.) or Title 17-A (§556) shall not be included;

    (c) identity of an adult who has been the victim of a sexual offense under Title 17-A, chapter 11, §§251-253 and 255;

    (d) identity of victim who is an informer pursuant to Rule 509 M.R. Evid., shall not be included;

    (e) identity of a victim, where inclusion would likely cause the victim great embarrassment and/or humiliation shall not be included.

17. CIRCUMSTANCES OF ARREST:

    (a) time and place of arrest; resistance, pursuit and use of weapon, if any

    (b) length of investigation

    (c) any evidence seized by police at time of arrest

MAINE

GUIDELINES RELATING TO PUBLIC ACCESS TO THE RECORDS OF LOCAL LAW ENFORCEMENT AGENCIES

ERRATA SHEET

pg. 5, line 2,
"suspension" should
read "supervision".

pg. 6, last line -
add "retained at and
by such courts".

pg. 13, footnote - last
full line "arrangements"
should read "arraignment".

MAINE

INTRODUCTION

The records of local law enforcement agencies are "public records" within the meaning of 1 M.R.S.A. §402(3) and, as such, are fully open to public inspection except to the extent that such records are either designated confidential by statute or privileged against discovery in civil or criminal proceedings. (See 1 M.R.S.A. §402(3)(A) and (B)) Although not an exhaustive list, the most commonly occurring and most comprehensive of the limitations placed upon the public's right of access to the records of local law enforcement agencies by virtue of 1 M.R.S.A. §402(3)(A) and (B) are reflected in 16 M.R.S.A. §§601-607 (Criminal History Record Information Act), Rule 509 of the Maine Rules of Evidence (Identity of Informer Privilege) and 15 M.R.S.A. §3308 (Inspection of Police Records Relating to a Juvenile).

I. Applicability of 1 M.R.S.A. §§401-410 (Freedom of Access Law) to the records of local law enforcement agencies.

The key to determining whether the Freedom of Access Law applies to local law enforcement agencies lies in the definition of "public record." That term is defined in section 402(3) in the following manner:

> "3. Public records. The term 'public records' shall mean any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:
>
> A. Records that have been designated confidential by statute;
>
> B. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding, . . ."

Although neither the language of §402(3), nor the declaration of policy in §401,[1] nor any of the legislative

[1] 1 M.R.S.A. §401 provides:

> "§401. Declaration of public policy; rules of construction
>
> The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter.
>
> This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent."

MICROFILMED FROM BEST AVAILABLE COPY

debates[2] expressly indicate that the Legislature intended that the records of local law enforcement agencies were to be included within the term "public records", the language of §402(3) clearly produces that result. The conclusion that §402(3) must be construed to encompass the records of a local law enforcement agency is buttressed by the "Statement of Fact" accompanying House Amendment "E" to H.P. 2226, L.D. 2316 (AN ACT to Revise and Clarify the Freedom of Access Law")[3] which in relevant part stated the following:

> "This amendment would make it clear that the right to inspect public records is not limited to those records kept by bodies of agencies that conduct "public proceedings" in the sense of meetings, but extends to all public records as defined in the law regardless what agency, office or official keeps those records.. . ."

Because the records of local law enforcement agencies are "public records" within the meaning of 1 M.R.S.A. §402(3),[4] they are fully open to public inspection unless they are designated

---

[2] The legislative debate on this Act contains discussions relative to media coverage of legislative proceedings, the opening up of collective bargaining sessions between the public sector employers and employees, and the notification of the media of meetings of local governmental entities. See L.R. 1976, at 588-590, 778, 843-846.

[3] See P.L. 1976, c.758.

[4] Note that "public records" are not subject to being withheld by a law enforcement agency on the basis of the particular motive of the requestor. Motive is immaterial. Pursuant to the "Freedom of Access Law", public records are available, not to those who need to know, but rather to the public.

confidential by statute or are privileged against discovery in civil or criminal proceedings pursuant to 1 M.R.S.A. §402(3)(A) and (B).[5]

[5] Although 1 M.R.S.A. §402(3) contains three additional categories of exceptions - to wit, (C) (certain legislative materials), (D) (certain collective bargaining materials), and (E) (certain Maritime Academy and University of Maine materials) - these exceptions are not likely to be relevant to local law enforcement agencies.

II. Confidentiality provisions of the Criminal History Record Information Act (16 M.R.S.A. §§601-607)

As noted above, the Freedom of Access Law does not apply to records which are expressly designated confidential by a statute.[6] In this context, the statute most relevant to local law enforcement agencies is the Criminal History Record Information Act. Generally speaking, that Act either limits or bars public access to the following records: (1) records which contain what the statute defines as "criminal history record information;" and (2) investigative and intelligence files compiled for law enforcement purposes. Each of these categories will now be discussed.

A. Definition of criminal history record information

Unless the information falls within one of the exceptions explained below, law enforcement agencies may not disclose to the public "criminal history record information." Accordingly, it is essential that they understand the meaning of that term as it is defined by 16 M.R.S.A. §601(2).

> "'Criminal history record information' means information collected by criminal justice agencies[7] on individuals consisting of identifiable descriptions and notations of arrests, detentions, complaints, indictments, informations and any disposition [including dismissals

---

[6] Unlike the Maine State Police (see 25 M.R.S.A. §1631), the State Bureau of Identification (see 25 M.R.S.A. §1631) and the Department of the Attorney General (see 5 M.R.S.A. §200-D), local law enforcement agencies do not have a statute which deals exclusively with the confidentiality of their records.

[7] A local law enforcement agency is a "criminal justice agency" within the meaning of that term as defined in 16 M.R.S.A. §601(3).

> or decisions to drop charges] arising therefrom, sentencing, correctional suspension and release. The term does not include identification information such as fingerprints, palm prints or photograph records to the extent that such information does not indicate involvement of the individual in the criminal justice system. The term does not include records of civil violations."

The above definition of criminal history record information (hereafter referred to as CHRI) established what is essentially a two-pronged test. First, does the information contain identification data sufficient to identify the subject of the record? Second, does the record contain notations regarding any formal criminal justice transactions involving the identified individual? If both questions can be answered in the affirmative, the information is CHRI under §601(2).

Some mention must be made of what the term CHRI does not include. The definition expressly excludes identification information such as fingerprints and palm prints where such information does not indicate a specific involvement of the person in the criminal justice system. The definition also excludes information regarding civil violations, such as traffic infractions. It should be emphasized that while these exclusions are specifically recited in the statute, they were not intended as a complete list of the types of information wich are outside the definition of CHRI. The following are examples of information also excluded: (1) investigative or intelligence information such as suspected criminal activity, associates, hangouts, financial information, ownership of real or personal property, or other personal information;

MICROFILMED FROM BEST AVAILABLE COPY

(2) psychiatric records,[7-A] social histories, or other evaluative types of data; and (3) statistical data which does not reveal the identity of individuals.

As noted above, the importance of the definition of CHRI lies in the fact that such information may not be disseminated[8] to the public unless it falls within one of the exceptions contained in the Act. Those exceptions will now be discussed.

B. Criminal history record information which may be disseminated.

The exceptions in the Criminal History Record Information Act provide that certain information may be disseminated to the public even though it constitutes CHRI. Since these exceptions are set out in different sections of the Act, they will be grouped in accordance with the section in which they are found.

1. Exceptions in Section 602

§602(2) exempts the following documents from the Criminal History Record Information Act and thus permits their dissemination to the public even though they contain CHRI:

A. "wanted" posters and fugitive lists;

B. original records of entry such as police blotters and arrest books that are maintained by, among others, local law enforcement agencies and are compiled and organized chronologically;

C. District Court and Superior Court records of public judicial proceedings;

[7-A] Note, however, that psychiatric records are subject to the confidentiality provisions of both 34 M.R.S.A. §1-B (Dept. of Mental Health-Disclosure of Information) and Rule 503, M.R.Evid. (Physician and Psychotherapist-Patient Privilege).

[8] As defined in §601(4), dissemination means "...use of and access to information and the transmission of information whether orally, in writing or by electronic means."

D. written decisions of a court resulting from a public judicial proceeding;

E. records of all traffic offenses including traffic infractions, maintained by the Secretary of State except operating under the influence (29 M.R.S.A. §1312), leaving the scene of an accident involving personal injury or death (29 M.R.S.A. §893), and revocation of license due to a conviction for manslaughter by use of a motor vehicle (29 M.R.S.A. §1313); and

F. petitions for and warrants of full and free pardons, conditional pardons, commutations, reprieves and amnesties.

Since paragraphs "B" and "E" are most likely to apply to local law enforcement agencies, they require further explanation.[9]

Paragraph "B" allows public access to original source records compiled by local law enforcement agencies to record, on a chronological basis, the occurrence of criminal events or transactions and basic facts about them. Examples include individual arrest reports describing the arrest and circumstances surrounding it, police blotters, arrest books, or similar chronologically organized logs. The principal purpose of such records is to provide current information on a local law enforcement agency's police activity and to guard against secret arrests, and this is the primary reason for the exclusion. However, an additional reason is that the difficulty of retrieval of arrest information from chronological original records of entry such as a police blotter tends to discourage unwarranted

---

[9] The discussion of paragraph "B" is taken almost literally from the explanation of 28 CFR Part 20, Subpart B, §20.20(b)(2), afforded to the Department of Justice-Law Enforcement Assistance Administration by the National Criminal Justice Information and Statistics Service on pages 11 and 12 of their 1976 Revised "Privacy and Security Planning Instructions, Criminal Justice Information Systems". §20.20(b)(2) and present §602(2)(B) are the same in all material respects.

MICROFILMED FROM BEST AVAILABLE COPY

inquiries into a person's past record, and thus the public availability of such records does not present a significant danger of privacy abuse.

It is important to recognize that this exemption for original entry documents does not apply to files which are arranged alphabetically, or to alphabetical indexes to chronological files. Original source documents are excluded only if they are compiled and accessible solely on a chronological basis. If the documents are filed alphabetically, thereby allowing a search by name for retrieval of all such records related to a particular person, the collection of documents is no longer covered by the exclusion and becomes subject to the Act. Likewise, any index to the documents that permits a search of the collection on the basis of name by the public would, in conjunction with the documents, be subject to the prohibition against disclosure found in the Act.[9-A]

9-A For example, in certain states the police blotter has been replaced by computerized booking systems which make it possible for private individuals or newsmen, upon submission of a specific name, to obtain, through a computer search, a history of the named person's arrests. Such files create a partial criminal history data bank potentially damaging to individual privacy, especially since they do not contain final dispositions.

Indeed, manual systems keyed to specific individuals which contain all of the agency's arrest reports compiled over a period of time have the same potential for abuse as computerized systems.

It is equally important to recognize, however, that this above-described limitation upon public access to original entry documents is not appropriately used by a local law enforcement agency as a device to avoid compliance with the evident legislative intent expressed in paragraph "B". Local law enforcement agencies should ensure that original source documents such as arrest reports describing the arrest and circumstances surrounding it, police blotters, arrest books or similar chronologically arranged logs are both compiled and accessible solely on a chronological basis so that they are fully open to public access.

Turning to paragraph "E", this exception does not require extended discussion. The important point is that the exception for records of Title 29 criminal offenses does not appear to apply to local law enforcement agencies; rather it applies only to such records maintained for licensing purposes by the Secretary of State.

§602 contains two other exceptions - to wit, §602(3) and §602(4) - each of which will now be discussed.

The first, §602(3), speaks to two completely different situations. §602(3) initially provides that a local law enforcement agency may disclose

> "...to the public factual information concerning the status of an investigation, the apprehension, arrest, release or prosecution of an individual, the adjudication of charges or the correctional status of an individual, which is reasonably contemporaneous with the event to which the information relates. ..." (emphasis supplied)

MICROFILMED FROM BEST AVAILABLE COPY

The provision reflects legislative recognition "...that announcements of ongoing developments in the criminal justice process [e.g. announcements of arrests, convictions or new developments in the course of an investigation] should not be precluded from public disclosure" as long as such announcements are "reasonably contemporaneous" with the event to which the information relates - that is, as long as the new developments in the case are disseminated within a few days of their occurrence.[10] (See page 22118 of the Federal Register, Vol. 40, No. 98 - Tuesday, May 20, 1975)

Separate and distinct from the above-quoted language, §602(3) also provides that a local law enforcement agency may "confirm prior criminal history records information" to anyone

> "in response to a specific inquiry as to whether on a specified date a named person was arrested or had a complaint, information or indictment returned against him or had disposition on a charging document, provided that the information disclosed is based on data excluded by subsection 2 [§602(2)], and further provided that such ... [local law enforcement agency] shall disclose ... [at the same time] any and all criminal history record information in its custody or control which indicates the final disposition of the arrest, detention, information, indictment or ... [complaint]." (emphasis supplied)

This latter provision reflects legislative recognition

---

[10] The "reasonably contemporaneous with the event" language initially utilized in 28 CFR Part 20, Subpart B, §20.20(C) and adopted by our own legislature in §603(3), was replaced in the Federal Regulations on March 19, 1976 with the following clarifying language:

> "Nothing in these regulations prevents a criminal justice agency from disclosing to the public criminal history record information related to the offense for which an individual is currently within the criminal justice system."

The Maine legislature has not as yet followed suit. Thus, the "reasonably contemporaneous with the event" language is still controlling in Maine. Although the phrase is incapable of being defined precisely, it would appear appropriate to view it as providing for dissemination made within seven days of the event to which it relates. Further, nothing in the law prevents a local law enforcement agency from disclosing that a named person is being confined by that agency and the reason for such confinement.

that the public should not be precluded from obtaining confirmation of

> "certain matters of prior criminal record information upon specific inquiry. Thus, if a question is raised: 'Was X arrested by your agency on January 3, 1952' [11] and this can be confirmed or denied by looking at..."

information contained in any one of the exempted documents listed in §602(2)(A) thru (F), then the local law enforcement agency may respond to the inquiry.

In addition, however, the provision also reflects a legislative policy that, to the extent possible, the public should be made aware by the disseminating agency of any final disposition in the criminal matter which is the subject of the inquiry, regardless of whether the requestor has shown an interest in obtaining such information. Thus, relative to the "arrest" hypothetical used above, if the agency being questioned could confirm that X was arrested by that agency on January 3, 1952 (such information having been located in one of the exempted documents listed in §602(2)(A) thru (F)) and had in its files information indicating a final disposition (e.g. information reflecting that X was subsequently found "not guilty" of the offense for which he was arrested on January 3, 1952) then the agency would be required both to confirm the fact of the arrest and to inform the requestor of the subsequent "not guilty" finding.

The last exception to §602 is §602(4). §602(4) provides in relevant part:

---

[11] See page 22118 of the Federal Register, Vol. 40, No. 98 - Tuesday, May 20, 1975; see also 1976 Revised "Privacy and Security Planning Instructions, Criminal Justice Information Systems" at 14.

MICROFILMED FROM BEST AVAILABLE COPY

> "Nothing in this chapter [sic-subchapter] shall be construed to prevent the dissemination of criminal history information to any fire department within the State for the sole purpose of verifying the good character and record of applicants for positions with that fire department."

The provision authorizes the dissemination of CHRI for purposes of fire department employment. It is important to recognize that unlike criminal justice agencies who may obtain only conviction data for the purpose of assessing an applicant's suitability for criminal justice employment (see §604(1)(B); note no similar provision in §603), fire departments, pursuant to this subsection, are apparently provided blanket access to non-conviction data as well as conviction data.

2. Exceptions in section 603

§603 permits the dissemination, under certain circumstances, of specified criminal history record information which is generally referred to as non-conviction data. That data includes records of incidents which have resulted in (1) an acquittal (excluding acquittals by reason of mental disease or defect); (2) a conviction by which a full and free pardon has been granted;[12] and (3) a dismissal of a charging document under circumstances precluding the State from reinitiating the criminal charge.[13]

---

[12] A full and free pardon relieves the pardoned individual of both punishment and guilt. Penobscot Bar v. Kimball, 64 Me. 140, 150 (1875).

[13] Although not stated in §603, it is also necessary to include the following in order to bring Maine law into compliance with the meaning of non-conviction data as now found in the Department of Justice-Law Enforcement Assistance Administration regulation - 28 CFR Part 20, Subpart A, §20.3(k): information disclosing that (1) the police have elected not to refer the matter to a prosecutor; (2) a prosecutor has elected not to commence criminal proceedings; (3) criminal proceedings which have been indefinitely postponed (e.g., a "filed" case or a case which cannot be tried because the defendant is found to be mentally incompetent to stand trial); and (4) arrest

Dissemination of such "non-conviction data" is limited to:

> "A. Criminal justice agencies, for purposes of the administration of criminal justice (defined in 16 M.R.S.A. §601(1), except that such dissemination is not authorized for both subsection 1 [acquittal] and subsection 2 [pardon], where the Governor when granting a full and free pardon expressly provides that the criminal history record information relating to a crime for which that pardon has been granted shall not be made available to criminal justice agencies for purposes of administration of criminal justice;
>
> B. Persons and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement. The agreement shall specifically authorize access to data, limit the use of the data and provide sanctions for violations thereof;
>
> C. Persons and agencies for the express purpose of research, evaluation or statistical activities pursuant to an agreement with a criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluation or statistical purposes, insure the security and confidentiality of the data and provide sanctions for violations thereof;
>
> D. Persons and agencies where authorized by court order or court rule; and
>
> E. Such other state agencies which are by statute or executive order expressly allowed access to such criminal history record information in order to carry out their lawful duties.

It is important to recognize that the exceptions in §603 supplement those in §602. Thus, if the non-conviction data falls within either section, the Act does not prohibit its dissemination.

---

records without dispositions If a year has elapsed and no conviction has resulted and no active prosecution is pending - (to be an active prosecution the case must be still actively in process, that is, arrangements must have been completed and the case docketed for court trial).

MICROFILMED FROM BEST AVAILABLE COPY

3. Exceptions in section 604

§604 permits the dissemination, under certain circumstances, of specified criminal history record information which is generally referred to as conviction data. That data includes records of criminal justice transactions related to a criminal offense which has resulted in a conviction, guilty plea, or plea of nolo contendere. Dissemination of such "conviction data" is limited to:

> "A. Criminal justice agencies, for purposes of the administration of criminal justice;
>
> B. Criminal justice agencies, for purposes of criminal justice agency employment;
>
> C. Such other state agencies which require criminal history record information to implement a statute or executive order that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct; provided, that only information relating to the expressly referred to criminal conduct may be disseminated.
>
> D. Persons and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement or to conduct investigations determining the employment suitability of prospective law enforcement officers. The agreement shall specifically authorize access to data, limit the use of data to purposes for which given, insure security and confidentiality of the data and provide sanctions for violations thereof;
>
> E. Persons and agencies for the express purpose of research, evaluative or statistical activities pursuant to an agreement with a criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluative or statistical purposes, insure the security and confidentiality of the data and provide sanctions for violations thereof;

> F. Agencies of State and Federal Government which are authorized by statute or executive order to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information. Criminal justice agencies shall by rules or regulations approved by the Attorney General prescribe such reasonable procedures as are necessary to confirm the existence of such agency's statutory or executive order authorization and the identity and authority of the person requesting any criminal history record information in order to insure the security and confidentiality of such information; and
>
> G. Persons and agencies when authorized by court order or court rule. This includes, but is not limited to, a psychiatrist or licensed psychologist appointed by the Commissioner of Mental Health and Corrections under Title 15, section 101, to determine the mental condition of that accused person."

As was the case with non-conviction data, the exceptions in §604 supplement those in §602. Thus, if the conviction data falls within either section, the Act does not prohibit its dissemination.

C. Prohibition against public access to criminal investigative and intelligence files compiled for law enforcement purposes.

16 M.R.S.A. §606(1) which tracks 28 CFR Part 20, Subpart B, §20.21(g)(6), deals with a person's right to review CHRI concerning him maintained by, among others, a local law enforcement agency. The section provides in critical part:

> "Any person or his attorney shall have the right to inspect the criminal history record information concerning him maintained by a criminal justice agency, provided that a person's right to inspect or review criminal history record information pertaining to himself shall not extend to data contained in intelligence, investigatory or other related files and shall not be construed to include any other information than that included within the definition of "criminal history record information. . . ." (emphasis supplied)

MICROFILMED FROM BEST AVAILABLE COPY

The emphasized language makes it clear that the individual's right to inspect CHRI does not extend to data contained in intelligence, investigatory or other related files, whether or not that data is CHRI.

The limitations in the above statute reflect a fundamental legislative policy decision that criminal intelligence and investigative records are not to be construed as accessible to the public, a policy recognized with limitations in both the Federal Freedom of Information Act, (see 5 U.S.C.A. §552(c)(1)(7)) and the Federal Privacy Act of 1974 (see 5 U.S.C.A. §552a(j) and (k)). Inaccessibility to the public of criminal investigative and intelligence files compiled and stored by local law enforcement agencies was, no doubt, recognized by the legislature as a necessary prerequisite to effective law enforcement.

III. Privilege to refuse to disclose the names of informers furnishing information relating to or assisting in an investigation of a possible violation of law.

As previously noted, the Freedom of Access Law does not require disclosure of information which is privileged against discovery in civil or criminal proceedings. Rule 509(a) and (b) creates just such a privilege, in that it allows a local law enforcement agency to refuse to disclose to the public the identity of any person who has furnished to that agency information relating to or assisting in an investigation of a possible violation of a law.[14] There are, however, two limitations on this privilege of non-disclosure which are found in Rule 509(c).[15]

---

[14] Rule 509(a) and (b), M.R.Evid. provides:

> "(a) Rule of privilege. The United States, a state or subdivision thereof, or any foreign country has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisted in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.
>
> (b) Who may claim. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished."

[15] Rule 509(c), M.R.Evid. provides:

> "(c) Exceptions.
>
> (1) Voluntary disclosure; informer a witness. No privilege exists under this rule if the identity of the informer or his interest in the subject matter of his communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the government.
>
> (2) Testimony on merits. If it appears from the evidence in the case or from other showing by a party

(1) The privilege is lost once the identity of the informer or his interest in the subject matter of the communication has been disclosed to a person who would be adversely affected by the informer's communication. This applies whether the disclosure is made by the local law enforcement agency or by the informer's own action. Similarly, the privilege is lost if the informer makes an appearance as a witness for the government.

(2) If an informer is a potential key witness in a pending criminal case or in a pending civil case in which a local law enforcement agency invokes the privilege, the court must dismiss the charges to which the testimony would relate in the criminal case and may make any order that justice requires relative to the civil case.

---

that an informer may be able to give testimony necessary to a fair determination of the issue of guilt or innocence in a criminal case or of a material issue on the merits in a civil case to which a public entity is a party, and the informed public entity invokes the privilege, the court shall give the public entity an opportunity to show in camera facts relevant to determining whether the informer can, in fact, supply that testimony. The showing will ordinarily be in the form of affidavits, but the court may direct that testimony be taken if it finds that the matter cannot be resolved satisfactorily upon affidavit. If the court finds that there is a reasonable probability that the informer can give the testimony, and the public entity elects not to disclose his identity, the court on motion of the defendant in a criminal case shall dismiss the charges to which the testimony would relate, and the court may do so on its own motion. In civil cases, it may make any order that justice requires. Evidence submitted to the court shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the informed public entity. All counsel and parties shall be permitted to be present at every stage of proceedings under this subdivision except a showing in camera, at which no counsel or party shall be permitted to be present."

In addition to these two limitations on the privilege, Rule 510, M.R.Evid.,[16] provides that a local law enforcement agency can waive the "identity of informer" privilege if that agency voluntarily discloses or consents to the disclosure of any significant part of the privileged matter.

Finally, as pointed out in the "Advisor's Note" to Rule 509, M.R.Evid.,

> ". . . [The rule] reflects a recognition that effective use of informers in law enforcement compels protection of their anonymity. It is only the identity of the informer that need not be revealed [by the terms of the rule]. The content of what he says is not privileged [by the rule] except to the extent necessary to conceal his identity. . . ."

---

[16] Rule 510, M.R.Evid. provides:

> "A person upon whom these rules confer a privilege against disclosure waives the privilege if he or his predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter. This rule does not apply if the disclosure itself is privileged."

MICROFILMED FROM BEST AVAILABLE COPY

IV. Confidentiality of police records of juveniles under 15 M.R.S.A. §3308(5) of the Maine Juvenile Code.

15 M.R.S.A. §3308(5)[17] provides that records of local law enforcement agencies relating to juvenile crimes (defined in §3103(1))[18] are not open to the public except as follows: (1) by consent of the juvenile court (defined in §3003(15)); (2) to the extent that such records are a part of the record of an adjudicatory hearing (defined in §3303(1)) or subsequent dispositional hearing (defined in §3303(5)) relating to a juvenile crime that would have constituted murder, or a Class A, Class B or Class C crime if the juvenile involved had been prosecuted as an adult; or, (3) where "a juvenile charged with a juvenile crime that would constitute murder or a Class A, Class B or Class C offense and with a juvenile crime that would constitute a Class D or Class E offense or with conduct described in section 3103, subsection 1, paragraphs B,C,D or E, arising from the same underlying transaction" elects to have all charges adjudicated

---

[17] 15 M.R.S.A. §3308(5) provides:

> ". . . Police records, intake worker's records, probation officers' records and all other reports of social and clinical studies shall not be open to inspection except with consent of the court or except to the extent that such records, reports and studies were made a part of the record of a hearing that was open to the general public under section 3307."

[18] Note that these records relating to juvenile crimes potentially concern themselves with both juveniles (defined in §3003(14)) and adults involved in the commission of juvenile crimes prior to attaining their 18th birthday (see §3103(2)(D)).

in one hearing.[19] Such records, however, are "open to inspection by the juvenile, his parents, guardian or legal custodian, his attorney, the prosecuting attorney and to any agency to which legal custody of the juvenile was transferred as a result of adjudication" pursuant to §3308(3).

Records of local law enforcement agencies relating to juveniles involved in offenses other than juvenile crimes are not rendered confidential by §3308(5). A more difficult question arises with respect to records pertaining to a juvenile who is bound over by the juvenile court to be tried as an adult. Since the law on this subject is unclear, it is suggested for the present that the public not be given access to those records which involve criminal justice transactions occurring before the juvenile was formally bound over.

Although not a matter related to the application of §3308(5), 30 M.R.S.A. §508 (Disclosure of minor victims of sexual offenses) warrants attention here. 30 M.R.S.A. §508 provides as follows:

> "The Legislature finds that publicity given to the identity of minor victims of sexual offenses causes intense shame and humiliation for which abused children are particularly ill-prepared and may cause severe and permanent emotional harm to the victim of such an offense.
>
> The Legislature therefore declares its intent that district attorneys, their assistants and employees and other law enforcement officials refrain from any unnecessary pretrial disclosure

---

[19] In light of this mandate of §3308(5) law enforcement agencies should ensure that information collected and stored by them concerning juvenile crimes, unless open to the public pursuant to §3308(5), not be included in records to which the public has a right of access, including, of course, chronologically filed arrest records discussed in connection with 16 M.R.S.A. §602(2)(B).

> of information that may identify a minor victim of an offense under Title 17, chapter 93-B [Section 2921 et seq. of title 17], Title 17-A chapter 11 [Section 251 et seq. of title 17-A] or Title 17-A, Section 556."

Although this provision constitutes, in effect, a statement of policy rather than a legislative mandate declaring such information confidential, local law enforcement agencies should make every effort to comply with the stated legislative intent. To this end, local law enforcement agencies should, prior to trial, (1) decline to release identification data sufficient to identify the minor victim unless the requestor can demonstrate a need to know, and (2) ensure that such identification data is not reflected in records which by law are open to the public, including, of course, chronologically filed arrest records discussed in connection with 16 M.R.S.A. §602(2)(B).

V. Application of the exceptions to the Freedom of Access Law.

In applying the exceptions explained in sections II, III and IV, local law enforcement agencies should keep in mind that a particular record is not subject to public disclosure if it falls within any of the exceptions discussed above. For example, even if a record pertaining to a juvenile is not rendered confidential by the Juvenile Code, its dissemination may still be prohibited by the Criminal History Record Information Act. Similarly, a record which does not constitute CHRI may be privileged because it contains information furnished by an informer.

Under these guidelines, local law enforcement agencies should utilize the following formula whenever a member of the public requests access to a record. If the record is rendered confidential or privileged by statute, then the public does not have a right of access to that record. If the record does not fall within either a confidentiality statute or a privilege, then it must be made available for public scrutiny.

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	27-744 HB1378	X	X
2. Privacy and Security			
3. Dissemination Regulations	27-740 27-749 Reg. Title 12, .11	X X	X
4. Inspection	27-747 27.751 76A-3 Reg. Title 12,.05	X X X	X
5. Challenge	27-747 27-752 Reg. Title 12, .07	X X	X
6. Judicial Review	27-753 Reg. Title 12, .06	X	X
7. Purge: Non-Conviction			
8. Purge: Conviction			
9. Seal: Non-Conviction	27-292 27-736 27-737	X X X	

ITEM	CITATION	1978 Compendium	1979 Supplement
10. Seal: Conviction	27-292	X	
11. Remove Disqualification	27-292	X	
12. Deny CJ Record	27-792 27-740	X X	
13. Research Access	27-745 43B-22	X X	
14. Accurate & Complete	27-736 27-747 27-752	X X X	
15. Dedicate			
16. Civil Remedy	HB1326(4)(5)		X
17. Criminal Penalty	27-739 27-754 43B-22 76A-5 HB1326(5)	X X X X	X
18. Public Records	76A-1	X	

ITEM	CITATION	1978 Compendium	1979 Supplement
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination	HB1326(3) 76-A	X	X
22. Security	27.747 Reg. Title 12, .12	X	X
23. Transaction Logs	27-752	X	
24. Train Employees	88B-6	X	
25. List Systems			
26. F.O.I. Including CJ	76A.1	X	
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

MARY-and

BLANK PAGE

HOUSE OF DELEGATES

91r3271 No. 1378 1000-02700

By: Delegate Owens (Admin. Off. Cts.)
Introduced and read first time: February 16, 1979
Assigned to: Judiciary

Committee report: Favorable
House action: Adopted
Read second time: March 26, 1979

CHAPTER _____

AN ACT concerning

Criminal Justice Information System

FOR the purpose of modifying the definition of criminal history record information to exclude certain data pertaining to violations of the Public Local Laws; eliminating the need to report the filing of statement of charges until after an arrest; and changing procedures respecting agreements between the executive and judicial branches.

BY repealing and reenacting, with amendments,

Article 27 - Crimes and Punishments
Section 743(e), 747(a)(4) and 748(a)
Annotated Code of Maryland
(1976 Replacement Volume and 1978 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article 27 - Crimes and Punishments

743.

(e) "Criminal history record information" means data initiated or collected by a criminal justice agency on a person pertaining to a reportable event. The term does not include:

(4) Data pertaining to violations of the traffic laws of the State or any other traffic law, ordinance, or regulation, or violations of any local ordinances, or any

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike--out~~ indicates matter stricken by amendment.

HOUSE BILL No. 1378

State or local regulations, or violations of the Natural Resources Article OR PUBLIC LOCAL LAWS, unless the individual is arrested on a bench warrant issued for failure to appear in court or obey a court order for any such violation, or unless the individual is committed to a correctional facility upon conviction for any such violation;

747.

(a) The following events are reportable events under this subtitle:

(4) Presentment of an indictment, filing of a criminal information, or filing of a statement of charges AFTER ARREST;

748.

(a) The Secretary and the [Court of Appeals, pursuant to the rules adopted by them,] CHIEF JUDGE OF THE COURT OF APPEALS shall develop agreements between the central repository and criminal justice agencies pertaining to:

(1) The method by which the agency will report information, including the method of identifying an offender in a manner that permits other criminal justice agencies to locate the offender at any stage in the criminal justice system, the time of reporting, the specific data to be reported by the agency, and the place of reporting;

(2) The services to be provided to the agency by the central repository;

(3) The conditions and limitations upon the dissemination of criminal history record information by the agency;

(4) The maintenance of security in all transactions between the central repository and the agency;

(5) The method of complying with the right of a person to inspect, challenge, and correct criminal history record information maintained by the agency;

(6) Audit requirements to ensure the accuracy of all information reported or disseminated;

(7) The timetable for the implementation of the agreement;

(8) Sanctions for failure of the agency to comply with any of the provisions of this subtitle, including the revocation of any agreement between the agency and the central repository and appropriate judicial or administrative proceedings to enforce compliance; and

HOUSE BILL No. 1378

(9) Other provisions that the [Court of Appeals] CHIEF JUDGE and the Secretary may deem necessary.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1979.

AN ACT concerning

HOUSE BILL No. 1326
(81r0219)

Public Information Act

FOR the purpose of eliminating unnecessary definitions; adding and revising definitions; providing a policy statement; ~~allowing~~ ~~directing~~ providing that State and local governments ~~to~~ may maintain only necessary and relevant information about persons under certain conditions; providing greater access in certain circumstances to investigative, intelligence, and security records; generally revising the provisions relating to the right to inspect public records; making changes in the provisions permitting denial of public records or any portion thereof; providing an administrative review; providing for judicial enforcement; creating civil liability for violations; providing for appropriate personnel disciplinary action; providing for the removal of the subsections allowing special treatment of public records in Harford County; providing for statutory limitation on the right to bring an action; and clarifying language.

BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken by amendment.

HOUSE BILL No. 1326

Article 76A - Public Information
Section 1 through 5, inclusive
Annotated Code of Maryland
(1975 Replacement Volume and 1977 Supplement)

BY adding to

Article 76A - Public Information
Section 1A
Annotated Code of Maryland
(1975 Replacement Volume and 1977 Supplement)

BY adding to

Article - Courts and Judicial Proceedings
Section 5-110
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article 76A - Public Information

1.

[As used in this article:]

(A) IN THIS ARTICLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

[(a) The term "public] (B) "PUBLIC records" when not otherwise specified shall include any paper, correspondence, form, book, photograph, photostat, film, microfilm, sound recording, map, drawing, or other WRITTEN document, regardless of physical form or characteristics, and including all copies thereof, that have been made by [the] ANY BRANCH OF THE State [and any counties, municipalities and] GOVERNMENT, INCLUDING THE LEGISLATIVE, JUDICIAL, AND EXECUTIVE BRANCHES, BY ANY BRANCH OF A political [subdivisions] SUBDIVISION, [thereof] and by any [agencies] AGENCY OR INSTRUMENTALITY of the State[, counties, municipalities, and] OR A political [subdivisions thereof] SUBDIVISION, or received by them in connection with the transaction of public business[, except those privileged or confidential by law]. The term "public records" also includes the salaries of all [State] employees OF THE STATE, OF A POLITICAL SUBDIVISION, AND ANY AGENCY OR INSTRUMENTALITY THEREOF, both in the classified and nonclassified service[, and all county and municipal employees, whether in a classified or nonclassified service].

MICROFILMED FROM BEST AVAILABLE COPY

HOUSE BILL No. 1326

[(b) Public records shall be classified as follows:

(i) The term "official public records" shall include all original vouchers, receipts, and other documents necessary to isolate and prove the validity of every transaction relating to the receipt, use, and disposition of all public property and public income from all sources whatsoever; all agreements and contracts to which the State or any agency or subdivision thereof may be a party; all fidelity, surety, and performance bonds; all claims filed against the State or any agency or subdivisions thereof; all records or documents required by law to be filed with or kept by any agency or the State;

(ii) The term "office files and memoranda" shall include all records, correspondence, exhibits, books, booklets, drawings, maps, blank forms, or documents not above defined and classified as official public records; all duplicate copies of official public records filed with any agency of the State or subdivision thereof; all documents and reports made for the internal administration of the office to which they pertain but not required by law to be filed or kept with such agency; and all other documents or records, determined by the records committee to be office files and memoranda.]

(C) "APPLICANT" MEANS AND INCLUDES ANY PERSON REQUESTING DISCLOSURE OF PUBLIC RECORDS.

[(c) The term "writings"] (D) "WRITTEN DOCUMENTS" means and includes all books, papers, maps, photographs, cards, tapes, recordings, COMPUTERIZED RECORDS, or other documentary materials, regardless of physical form or characteristics.

[(d) The term "political] (E) "POLITICAL subdivision" means and includes every county, city and county, city, incorporated and unincorporated town, school district, and special district within the State.

[(e) The term "official] (F) "OFFICIAL custodian" means and includes [any] EACH AND EVERY officer or employee of the State or any agency, institution, or political subdivision thereof, who is responsible for the maintenance, care, and keeping of public records, regardless of whether such records are in his actual personal custody and control.

[(f) The term "custodian"] (G) "CUSTODIAN" means and includes the official custodian or any authorized person having personal custody and control of the public records in question.

[(g) The term "person"] (H) "PERSON" means and includes any natural person, corporation, partnership, firm [or], association, OR GOVERNMENTAL AGENCY.

HOUSE BILL No. 1325

[(h) The term "person] (I) "PERSON in interest" means and includes the person who is the subject of a record or any representative designated by said person, except that if the subject of the record is under legal disability, the term "person in interest" shall mean and include the parent or duly appointed legal representative.

1A.

THE STATE, COUNTIES, MUNICIPALITIES, AND POLITICAL SUBDIVISIONS, OR ANY AGENCIES THEREOF, ~~SHALL SHOULD~~ MAY MAINTAIN ONLY SUCH INFORMATION ABOUT A PERSON AS IS RELEVANT AND NECESSARY TO ACCOMPLISH A PURPOSE OF THE GOVERNMENTAL ENTITY OR AGENCY WHICH IS AUTHORIZED OR REQUIRED TO BE ACCOMPLISHED BY STATUTE, EXECUTIVE ORDER OF THE GOVERNOR OR THE CHIEF EXECUTIVE OF A LOCAL JURISDICTION, JUDICIAL RULE, OR OTHER LEGISLATIVE MANDATE. MOREOVER, ALL PERSONS ARE ENTITLED TO INFORMATION REGARDING THE AFFAIRS OF GOVERNMENT AND THE OFFICIAL ACTS OF THOSE WHO REPRESENT THEM AS PUBLIC OFFICIALS AND EMPLOYEES. TO THIS END, THE PROVISIONS OF THIS ACT SHALL BE CONSTRUED IN EVERY INSTANCE WITH THE VIEW TOWARD PUBLIC ACCESS, UNLESS AN UNWARRANTED INVASION OF THE PRIVACY OF A PERSON IN INTEREST WOULD RESULT THEREFROM, AND THE MINIMIZATION OF COSTS AND TIME DELAYS TO PERSONS REQUESTING INFORMATION.

2.

(a) All public records shall be open for inspection by any person at reasonable times, except as provided in this article or as otherwise provided by law[, but the]. THE official custodian of any public [records may] RECORD SHALL make AND PUBLISH such rules and regulations with reference to the TIMELY inspection AND PRODUCTION of such [records] RECORD as shall be reasonably necessary for the protection of such [records] RECORD and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(b) If the public records requested are not in the custody or control of the person to whom WRITTEN application is made, such person shall, [forthwith] WITHIN TEN WORKING DAYS OF THE RECEIPT OF THE REQUEST, notify the applicant of this fact AND IF KNOWN, THE CUSTODIAN OF THE RECORD AND THE LOCATION OR POSSIBLE LOCATION THEREOF.

(c) If the public records requested are in the custody and control of the person to whom WRITTEN application is made but are [in active use or in storage] NOT IMMEDIATELY AVAILABLE, [and therefore not available at the time an applicant asks to examine them,] the custodian shall, [forthwith] WITHIN TEN WORKING DAYS OF THE RECEIPT OF THE REQUEST, notify the applicant of this fact and shall set forth a date and hour within a reasonable time at which time the record will be available for the exercise of the right given by this article.

MICROFILMED FROM BEST AVAILABLE COPY

HOUSE BILL No. 1326

[(d) All written documents presented to the County Commissioners of Harford County shall be open and available to the press and to the public of Harford County. The attorney for the county and the county director of public information shall disclose the contents of any document publicly presented to either of them upon the demand of any citizen of Harford County.

(e)] (D) In Charles County, except for records kept by officials, agencies, or departments of the State of Maryland, public information shall be regulated by § 6 of this article.

3.

(a) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds or as provided in subsection (b) or (c) of this section:

(i) Such inspection would be contrary to any State statute;

(ii) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law; [or]

(iii) Such inspection is prohibited by rules promulgated by the Court of Appeals, or by the order of any court of record[.]; OR

(IV) SUCH PUBLIC RECORDS ARE PRIVILEGED OR CONFIDENTIAL BY LAW.

(b) The custodian may deny the right of inspection of the following records OR APPROPRIATE PORTIONS THEREOF, unless otherwise provided by law, [on the ground that] IF disclosure to the applicant would be contrary to the public interest[;]:

(i) Records of investigations conducted by, or of intelligence information or security procedures of, any sheriff, county attorney, city attorney, STATE'S ATTORNEY, the Attorney General, police department, or any investigatory files compiled for any other law-enforcement, JUDICIAL, CORRECTIONAL, or prosecution purposes[;], BUT THE RIGHT OF A PERSON ~~OF~~ IN INTEREST TO INSPECT THE RECORDS MAY BE DENIED ONLY TO THE EXTENT THAT THE PRODUCTION OF THEM WOULD (A) INTERFERE WITH VALID AND PROPER LAW-ENFORCEMENT PROCEEDINGS, (B) DEPRIVE ANOTHER PERSON OF A RIGHT TO A FAIR TRIAL OR AN IMPARTIAL ADJUDICATION, (C) CONSTITUTE AN UNWARRANTED INVASION OF PERSONAL PRIVACY, (D) DISCLOSE THE IDENTITY OF A CONFIDENTIAL SOURCE, (E) DISCLOSE INVESTIGATIVE TECHNIQUES AND PROCEDURES, ~~OR (F)~~ (F) PREJUDICE

HOUSE BILL No. 1326

ANY INVESTIGATION, OR (G) ENDANGER THE LIFE OR PHYSICAL SAFETY OF ~~LAW ENFORCEMENT PERSONNEL~~ ANY PERSON;

(ii) Test questions, scoring keys, and other examination data pertaining to administration of [a licensing examination, for] LICENSES OR employment or academic [examination] EXAMINATIONS; except that written promotional examinations and the scores or results thereof shall be available for inspection, but not copying or reproduction, by the person in interest after the conducting and grading of any such examination;

(iii) The specific details of bona fide research projects being conducted by [a State] AN institution OF THE STATE OR A POLITICAL SUBDIVISION, EXCEPT THAT THE NAME, TITLE, EXPENDITURES, AND THE TIME WHEN THE FINAL PROJECT SUMMARY SHALL BE AVAILABLE;

(iv) The contents of real estate appraisals made for the State or a political subdivision thereof, relative to the acquisition of property or any interest in property for public use, until such time as title of the property or property interest has passed to the State or political subdivision, except that the contents of such appraisal shall be available to the owner of the property at any time, and except as provided by statute.

(v) Interagency or intraagency memorandums or letters which would not be available by law to a private party in litigation with the agency.

(c) The custodian shall deny the right of inspection of the following records OR ANY PORTION THEREOF, unless otherwise provided by law:

(i) Medical, psychological, and sociological data on individual persons, exclusive of coroners' autopsy reports;

(ii) Adoption records or welfare records on individual persons;

(iii) Personnel files except that such files shall be available to the PERSON IN INTEREST, AND THE duly elected and appointed officials who supervise the work of the person in interest~~[~~. Applications, performance ratings and scholastic achievement data shall be available only to the person in interest and to the duly elected and appointed officials who supervise his work~~]~~;

~~[~~(iv) Letters of reference;~~]~~

[(v)] (IV) Trade secrets, [privileged] information PRIVILEGED BY LAW, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person;

MICROFILMED FROM BEST AVAILABLE COPY

[(vi)] (V) Library, archives, and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of such contribution; [and]

[(vii)] (VI) Hospital records relating to medical administration, medical staff, personnel, medical care, and other medical information, whether on individual persons or groups, or whether of a general or specific classification;

[(viii)] (VII) School district records containing information relating to the biography, family, physiology, religion, academic achievement, and physical or mental ability of any student except to the person in interest or to the officials duly elected and appointed to supervise him[.]; AND

[(ix)] (VIII) Circulation records maintained by public libraries showing personal transactions by those borrowing from them.

(d) [If] WHENEVER the custodian denies A WRITTEN REQUEST FOR access to any public record OR ANY PORTION THEREOF UNDER THIS SECTION, THE CUSTODIAN SHALL PROVIDE the applicant [may request] WITH a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied[,] AND ALL REMEDIES FOR REVIEW OF THIS DENIAL AVAILABLE UNDER THIS ARTICLE. [and it] THE STATEMENT shall be furnished [forthwith] to the applicant WITHIN TEN WORKING DAYS OF DENIAL. IN ADDITION, ANY REASONABLY SEVERABLE PORTION OF A RECORD SHALL BE PROVIDED TO ANY PERSON REQUESTING SUCH RECORD AFTER DELETION OF THOSE PORTIONS WHICH MAY BE WITHHELD FROM DISCLOSURE.

[(e) Any person denied the right to inspect any record covered by this article may apply to the circuit court of the county where the record is found for any order directing the custodian of such record to show cause why he should not permit the inspection of such record.]

[(f)] (E) If, in the opinion of the official custodian of any public record WHICH IS OTHERWISE REQUIRED TO BE DISCLOSED UNDER THIS ARTICLE, disclosure of the contents of said record would do substantial injury to the public interest, [notwithstanding the fact that said record might otherwise be available to public inspection, he may apply] THE OFFICIAL CUSTODIAN MAY TEMPORARILY DENY DISCLOSURE PENDING A COURT DETERMINATION OF WHETHER DISCLOSURE WOULD DO SUBSTANTIAL INJURY TO THE PUBLIC INTEREST. PROVIDED THAT, WITHIN TEN WORKING DAYS OF THE DENIAL THE OFFICIAL CUSTODIAN APPLIES to the circuit court of the county where the record is located OR WHERE HE MAINTAINS HIS PRINCIPAL OFFICE for an order permitting him

to CONTINUE TO DENY OR restrict such disclosure. THE FAILURE OF THE OFFICIAL CUSTODIAN TO APPLY FOR A COURT DETERMINATION FOLLOWING A TEMPORARY DENIAL OF INSPECTION WILL RESULT IN HIS BECOMING SUBJECT TO THE SANCTIONS PROVIDED IN THIS ARTICLE FOR FAILURE TO DISCLOSE AUTHORIZED PUBLIC RECORDS REQUIRED TO BE DISCLOSED. After hearing, the court may issue such an order upon a finding that disclosure would cause substantial injury to the public interest. The person seeking permission to examine the record shall have notice of [said hearing] THE APPLICATION SENT TO THE CIRCUIT COURT served upon him in the manner provided for service of process by the MARYLAND Rules of Procedure and shall have the right to appear and be heard.

4.

(a) In all cases in which a person has the right to inspect any public records [he may request that he] SUCH PERSON SHALL HAVE THE RIGHT TO be furnished copies, printouts, or photographs for a reasonable fee to be set by the official custodian. Where fees for certified copies or other copies, printouts, or photographs of such record are specifically prescribed by law, such specific fees shall apply.

(b) If the custodian does not have the facilities for making copies, printouts, or photographs of records which the applicant has the right to inspect, then the applicant shall be granted access to the records for the purpose of making copies, printouts, or photographs. The copies, printouts, or photographs shall be made while the records are in the possession, custody, and control of the custodian thereof and shall be subject to the supervision of such custodian. When practical, they shall be made in the place where the records are kept, but if it is impractical to do so, the custodian may allow arrangements to be made for this purpose. If other facilities are necessary the cost of providing them shall be paid by the person desiring a copy, printout, or photograph of the records. The official custodian may establish a reasonable schedule of times for making copies, printouts, or photographs and may charge a reasonable fee for the services rendered by his or his deputy in supervising the copying, printingout, or photographing as he may charge for furnishing copies under this section.

5.

(A) EXCEPT IN CASES OF TEMPORARY DENIALS UNDER SECTION 3(E) OF THIS SUBTITLE ANY APPLICANT DENIED THE RIGHT TO INSPECT PUBLIC RECORDS WHERE THE OFFICIAL CUSTODIAN OF THE RECORDS IS AN AGENCY SUBJECT TO THE PROVISIONS OF SUBTITLE 24 OF ARTICLE 41 OF THIS CODE MAY ASK FOR AN ADMINISTRATIVE REVIEW OF THIS DECISION IN ACCORDANCE WITH SECTION 251 THROUGH 254 OF ARTICLE 41 OF THIS CODE, HOWEVER, THIS REMEDY NEED NOT BE EXHAUSTED PRIOR TO FILING SUIT IN THE CIRCUIT COURT PURSUANT TO THIS ARTICLE.

MICROFILMED FROM BEST AVAILABLE COPY

HOUSE BILL No. 1326

(B) (1) ON COMPLAINT OF ANY PERSON DENIED THE RIGHT TO INSPECT ANY RECORD COVERED BY THIS ARTICLE, THE CIRCUIT COURT IN THE JURISDICTION IN WHICH THE COMPLAINANT RESIDES, OR HAS HIS PRINCIPAL PLACE OF BUSINESS, OR IN WHICH THE RECORDS ARE SITUATED, HAS JURISDICTION TO ENJOIN THE STATE, ANY COUNTY, MUNICIPALITY, OR POLITICAL SUBDIVISION, ~~OR~~ ANY AGENCY, OFFICIAL OR EMPLOYEE THEREOF, FROM WITHHOLDING RECORDS AND TO ORDER THE PRODUCTION OF ANY RECORDS IMPROPERLY WITHHELD FROM THE COMPLAINANT. IN SUCH A CASE, THE COURT MAY EXAMINE THE CONTENTS OF THE RECORDS IN CAMERA TO DETERMINE WHETHER THE RECORDS OR ANY PART THEREOF MAY BE WITHHELD UNDER ANY OF THE EXEMPTIONS SET FORTH IN SECTION 3, AND THE BURDEN IS ON THE DEFENDANT TO SUSTAIN ITS ACTION. IN CARRYING THIS BURDEN THE DEFENDANT MAY SUBMIT TO THE COURT FOR REVIEW A MEMORANDUM JUSTIFYING THE WITHHOLDING OF THE RECORDS.

(2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE DEFENDANT SHALL SERVE AN ANSWER OR OTHERWISE PLEAD TO ANY COMPLAINT MADE UNDER THIS SUBSECTION WITHIN 30 DAYS AFTER SERVICE UPON THE DEFENDANT OF THE PLEADING IN WHICH THE COMPLAINT IS MADE, UNLESS THE COURT OTHERWISE DIRECTS FOR GOOD CAUSE SHOWN.

(3) EXCEPT AS TO CASES THE COURT CONSIDERS OF GREATER IMPORTANCE, PROCEEDINGS BEFORE THE COURT, AS AUTHORIZED BY THIS SECTION, AND APPEALS THEREFROM SHALL TAKE PRECEDENCE ON THE DOCKET OVER ALL OTHER CASES AND SHALL BE HEARD AT THE EARLIEST PRACTICABLE DATE AND EXPEDITED IN EVERY WAY.

(4) IN ADDITION TO ANY OTHER RELIEF WHICH MAY BE GRANTED TO A COMPLAINANT, IN ANY SUIT BROUGHT UNDER THE PROVISIONS OF THIS SECTION IN WHICH THE COURT DETERMINES THAT THE DEFENDANT HAS KNOWINGLY AND WILFULLY FAILED TO DISCLOSE OR FULLY DISCLOSE RECORDS AND INFORMATION TO ANY PERSON WHO, UNDER THIS ARTICLE, IS ENTITLED TO RECEIVE IT, AND THE DEFENDANT KNEW OR SHOULD HAVE KNOWN THAT THE PERSON WAS ENTITLED TO RECEIVE IT, ~~THE DEFENDANT JURISDICTION~~ ANY DEFENDANT GOVERNMENTAL ENTITY OR ENTITIES SHALL BE LIABLE TO THE COMPLAINANT IN AN AMOUNT EQUAL TO THE SUM OF THE ACTUAL DAMAGES SUSTAINED BY THE INDIVIDUAL AS A RESULT OF THE REFUSAL OR FAILURE~~, AND IN NO CASE SHALL A PERSON BE ENTITLED TO RECOVERY LESS THAN THE SUM OF $1,000~~ AND SUCH PUNITIVE DAMAGES AS THE COURT DEEMS APPROPRIATE.

(5) IN THE EVENT OF NONCOMPLIANCE WITH AN ORDER OF THE COURT, THE COURT MAY PUNISH THE RESPONSIBLE EMPLOYEE FOR CONTEMPT.

(6) THE COURT MAY ASSESS AGAINST ~~THE DEFENDANT JURISDICTION~~ ANY DEFENDANT GOVERNMENTAL ENTITY OR ENTITIES REASONABLE ATTORNEY FEES AND OTHER LITIGATION COSTS REASONABLY INCURRED IN ANY CASE UNDER THIS SECTION IN WHICH THE COURT DETERMINES THAT THE APPLICANT HAS SUBSTANTIALLY PREVAILED.

HOUSE BILL No. 1326

(C) WHENEVER THE COURT ORDERS THE PRODUCTION OF ANY RECORDS IMPROPERLY WITHHELD FROM THE APPLICANT, AND IN ADDITION, FINDS THAT THE CUSTODIAN ACTED ARBITRARILY OR CAPRICIOUSLY IN WITHHOLDING THE PUBLIC RECORD, THE COURT SHALL FORWARD A CERTIFIED COPY OF ITS FINDING TO THE APPOINTING AUTHORITY OF THE CUSTODIAN. UPON RECEIPT THEREOF, THE APPOINTING AUTHORITY SHALL, AFTER APPROPRIATE INVESTIGATION, TAKE SUCH DISCIPLINARY ACTION AS IS WARRANTED UNDER THE CIRCUMSTANCES.

(D) Any person who [willfully] WILFULLY and knowingly violates the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed [one hundred dollars ($100.00)] $100.

Article - Courts and Judicial Proceedings

5-110.

AN ACTION TO ENFORCE ANY CRIMINAL OR CIVIL LIABILITY CREATED UNDER SECTIONS 1 THROUGH 5 OF ARTICLE 76A OF THIS CODE MAY BE BROUGHT WITHIN TWO YEARS FROM THE DATE ON WHICH THE CAUSE OF ACTION ARISES, EXCEPT THAT IF THE DEFENDANT HAS MATERIALLY AND WILFULLY MISREPRESENTED ANY INFORMATION REQUIRED UNDER THOSE SECTIONS TO BE DISCLOSED TO A PERSON AND THE INFORMATION SO MISREPRESENTED IS MATERIAL TO THE ESTABLISHMENT OF LIABILITY OF THE DEFENDANT TO THE PERSON UNDER THOSE SECTIONS, THE ACTION MAY BE BROUGHT AT ANY TIME WITHIN TWO YEARS AFTER DISCOVERY BY THE PERSON OF THE MISREPRESENTATION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

MICROFILMED FROM BEST AVAILABLE COPY

Title 12
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Subtitle 06 STATE POLICE

12.06.08 Implementation of the Criminal Justice Information System Statute

Authority: Article 27, §746,
Annotated Code of Maryland

Notice of Proposed Action

The Department of Public Safety and Correctional Services proposes to adopt the regulations printed below, to be effective on or about December 31, 1977.

These regulations will set forth the responsibilities of the Criminal Records Central Repository; set forth the right of an individual to inspect his criminal history record, to challenge a denial to inspect his record, to challenge the completeness, contents, accuracy, and dissemination of his criminal history record information; and provide rules relating to the collection and dissemination of criminal history record information; provide rules relating to security of criminal history record information, auditing of criminal justice agencies, and agreements between CRCR and criminal justice agencies.

Opportunity for Public Comment

The Department of Public Safety and Correctional Services will hold a hearing concerning the adoption of these regulations on December 19, 1977, from 10 a.m. to 12 noon at the Maryland State Police Headquarters—Gymnasium, Reisterstown Road and Sudbrook Lane, Pikesville, Maryland. All interested persons are invited to attend and give their views.

Written comments may be sent to Robert J. Lally, Secretary, Department of Public Safety and Correctional Services, Executive Plaza One, Suite 500, Hunt Valley, Maryland 21031; these comments must be received no later than December 17, 1977.

These proposed regulations may be revised before adoption as a result of public comment and other relevant considerations.

.01 Purpose of Regulations.

The purpose of these regulations is to implement the

provisions of Article 27, §§742—755, Annotated Code of Maryland.

.02 Applicability of Regulations.

These regulations apply only to the executive branch of State government and local criminal justice agencies other than those in the judicial branch of government.

.03 Definitions.

A. "Criminal justice agency" means any government agency or subunit of any such agency which is authorized by law to exercise the power of arrest, detention, prosecution, adjudication, correctional supervision, rehabilitation, or release of persons suspected, charged, or convicted of a crime and which allocates a substantial portion of its annual budget to any of these functions. The term does not include the Juvenile Services Administration or a juvenile court, but it does include the following agencies, when exercising jurisdiction over criminal matters or criminal history record information:

(1) State, county, and municipal police departments and agencies, sheriffs' offices, correctional facilities, parole and probation departments, jails and detention centers;

(2) The Offices of the Attorney General, the State's Attorneys, and any other person authorized by law to prosecute persons accused of criminal offenses;

(3) The Administrative Office of the Courts, the Court of Appeals, the Court of Special Appeals, the circuit courts, including the courts of the Supreme Bench of Baltimore City, the District Court of Maryland, and the offices of the clerks of these courts.

B. "Criminal history record information (CHRI)" means data initiated or collected by a criminal justice agency on a person pertaining to a reportable event. The term does not include:

(1) Data contained in intelligence or investigatory files or police work-product records used solely for police investigation purposes;

(2) Data pertaining to a proceeding under Title 3, Subtitle 8, of the Courts and Judicial Proceedings Article (Juvenile Causes) of the Annotated Code of Maryland, but it does include data pertaining to a person following waiver of jurisdiction by a juvenile court;

(3) Wanted posters, police blotter entries, court records of public judicial proceedings, or published court opinions;

(4) Data pertaining to violations of the traffic laws of the State or any other traffic law, ordinance, or regulation, except offenses involving death or injury to a person, or offenses under §11-902 of Article 66½ of the Code;

Agency note: An emergency bill has been introduced in the General Assembly which may change this definition.

MICROFILMED FROM BEST AVAILABLE COPY

(5) Data concerning the point system established by the Motor Vehicle Administration in accordance with the provisions of Title 16, Subtitle 4, of the Transportation Article of the Annotated Code of Maryland;

(6) Presentence investigation and other reports prepared by a probation department for use by a court in the exercise of criminal jurisdiction or by the Governor in the exercise of his power of pardon, reprieve, commutation, or nolle prosequi; or

(7) Data contained in current case-in-progress systems or records pertinent to public judicial proceedings which are reasonably contemporaneous to the event to which the information relates.

C. "Reportable event" means an event specified or provided for in Article 27, §747, Annotated Code of Maryland.

D. "Reporting" means the transmittal of CHRI by criminal justice agencies or repositories to the Criminal Records Central Repository (CRCR).

E. "Collection" refers to the receipt, organization, and processing of CHRI by a criminal justice agency, a criminal justice repository, or CRCR.

F. "Disseminate" means to transmit CHRI in any oral or written form. The term does not include:

(1) The transmittal of this information within a criminal justice agency;

(2) The reporting of this information as required by Article 27, §747, Annotated Code of Maryland; or

(3) The transmittal of this information between criminal justice agencies in order to permit the initiation of subsequent criminal justice proceedings against a person relating to the same offense.

G. "Criminal justice information system" means the equipment, facilities, procedures, agreements, and personnel used in the collection, processing, preservation, and dissemination of CHRI.

H. "Non-conviction criminal history record information" means arrest information without disposition if an interval of 1 year has elapsed from the date of arrest and no active prosecution of the charge is pending; or information disclosing that the police have elected not to refer a matter to a prosecutor; or that a prosecutor has elected not to commence criminal proceedings; or that proceedings have been indefinitely postponed; as well as all acquittals and all dismissals.

I. 'Conviction criminal history record information" means CHRI regarding reportable events which have resulted in a finding of guilt. For the purpose of dissemination, a finding of probation before verdict or judgment, or the acceptance of a plea of nolle contendere by a court, shall be considered as conviction CHRI.

.04 Criminal Records Central Repository (CRCR)

A. Pursuant to Article 27, §747(b), Annotated Code of Maryland, the criminal justice information system central repository will be the "Criminal Records Central Repository (CRCR)" of the Maryland State Police. The CRCR will perform all functions heretofore assigned to the State Central Crime Records Bureau; and other tasks delegated to it by the Secretary to ensure the accuracy, completeness, and security of CHRI in Maryland.

B. The CRCR has the responsibility to enter into agreements with agencies which, by law or regulatory process, have the right to access or contribute to CHRI. Each agreement will comply with Article 27, §748, Annotated Code of Maryland and will require the approval of the Secretary.

C. The CRCR has the authority to perform audits of any criminal justice agency with respect to any individual CHRI to ensure the completeness and accuracy of information reported or disseminated.

D. The CRCR has the authority to inspect and evaluate the procedures and facilities relating to the privacy and security of CHRI in any agency bound by these regulations and to enforce the sanctions agreed upon with the CRCR.

E. The CRCR has the authority to deny a criminal justice agency access to any CHRI unless access is in accordance with an approved agreement.

F. The CRCR has the authority to refuse acceptance of any CHRI unless the information is submitted in accordance with an approved agreement.

.05 Right of an Individual to Inspect His Criminal History Record.

A. A person may inspect criminal history record information concerning him maintained by a criminal justice agency, unless the information or any part of it is relevant to a pending criminal proceeding. This latter restriction does not affect any right of inspection and discovery permitted by rule of court or by statute.

B. A fee of $5, payable to the Maryland State Police, will be charged an individual for each request to review his record, unless the individual files a verified certificate of indigency.

C. If an individual wishes to file a request and subsequently review his criminal history record at the CRCR, he may do so at the following barracks of the Maryland State Police between the hours of 9 a.m. and 3 p.m., Monday through Friday, except on State holidays. An individual may review and challenge his record only at the barrack listed beside the county in which he resides or at the CRCR located at the Maryland State Police Headquarters in Pikesville, Maryland.

MICROFILMED FROM BEST AVAILABLE COPY

Allegany County	*Barrack "C" MSP* *Cumberland, Maryland*
Anne Arundel County	*Barrack "J" MSP* *Annapolis, Maryland*
Baltimore City	*Headquarters, MSP* *Pikesville, Maryland*
Baltimore County	*Headquarters, MSP* *Pikesville, Maryland*
Calvert County	*Barrack "H" MSP* *Waldorf, Maryland*
Caroline County	*Barrack "T" MSP* *Easton, Maryland*
Carroll County	*Barrack "G" MSP* *Westminster, Maryland*
Cecil County	*Barrack "F" MSP* *North East, Maryland*
Charles County	*Barrack "H" MSP* *Waldorf, Maryland*
Dorchester County	*Barrack "E" MSP* *Salisbury, Maryland*
Frederick County	*Barrack "B" MSP* *Frederick, Maryland*
Garrett County	*Barrack "C" MSP* *Cumberland, Maryland*
Harford County	*Barrack "D" MSP* *Bel Air, Maryland*
Howard County	*Barrack "A" MSP* *Jessup, Maryland*
Kent County	*Barrack "T" MSP* *Easton, Maryland*
Montgomery County	*Barrack "N" MSP* *Rockville, Maryland*
Prince George's County	*Barrack "L" MSP* *Forrestville, Maryland*
Queen Anne's County	*Barrack "T" MSP* *Easton, Maryland*
St. Mary's County	*Barrack "H" MSP* *Waldorf, Maryland*
Somerset County	*Barrack "E" MSP* *Salisbury, Maryland*
Talbot County	*Barrack "T" MSP* *Easton, Maryland*
Washington County	*Barrack "O" MSP* *Hagerstown, Maryland*
Wicomico County	*Barrack "E" MSP* *Salisbury, Maryland*
Worcester County	*Barrack "E" MSP* *Salisbury, Maryland*

D. Until all criminal history data is filed at the CRCR an individual may file a request and subsequently review that part of his criminal history record maintained by a criminal justice agency other than the CRCR. This request and review is subject to the procedures of the criminal justice agency which maintains the record. Each criminal justice agency which maintains criminal history record information will adopt procedures for individual review and challenge of that information. These procedures will be in compliance with applicable federal and State law and regulations.

E. An offender held in custody at a law enforcement agency, detention center, or correctional institution as the result of a court action may file a request and subsequently review his criminal history record at the location of his confinement.

F. Before an individual may review his record he will verify his identity by fingerprint comparison with the CRCR record through the use of Form CRCR001 as described in these regulations.

G. Any attorney may review his client's criminal history record if he satisfactorily establishes his identity and presents a written authorization from his client.

H. Form CRCR001, properly completed and including the individual's right thumbprint or other available print if the right thumb cannot be fingerprinted, will be forwarded to the CRCR for identification, verification, and record check.

I. The CRCR will verify the identity of the applicant.

J. Upon confirmation of the applicant by fingerprint comparison and other available identifiers, the CRCR will complete Form CRCR001 and return it and a copy of any record information within 30 days to the agency or barrack which submitted the request.

K. The CRCR or other agency possessing the individual's criminal history record may deny review of a record if, in its opinion, the individual cannot satisfactorily identify himself as the subject of that record; or if the individual is not entitled to review the record under the limitations set forth in Article 27, §752(f), Annotated Code of Maryland. The reason for denial will be indicated on Form CRCR001 by the CRCR or other agency which denies access and shall be returned to the individual within 30 days. The individual will be advised in writing of his right to appeal the denial of review.

L. The CRCR will retain a copy of Form CRCR001.

M. When an individual returns to review his criminal history record, he shall countersign Form CRCR001. An individual inspecting his criminal history record may make notes of the information but cannot require the agency to make a copy of any information or to remove any document in order to make a copy.

N. A person who challenges his criminal history record information may challenge the completeness, the contents, the accuracy, or the dissemination of this information.

.06 Right of an Individual to Challenge a Denial to Inspect.

A. If an individual is denied the right to inspect his criminal history record, pursuant to the procedures in

MICROFILMED FROM BEST AVAILABLE COPY

Regulation .05 above, he may challenge this denial in accordance with the procedures in this regulation. This regulation does not pertain to court procedures or court records where inspection has been denied by the courts.

B. A fee of $5 payable to the Maryland State Police will be charged an individual for each request to challenge his record, unless the individual files a verified certificate of indigency.

C. An individual must file a challenge to a denial of his request to inspect his record by submitting Form CRCR002 and a complete set of fingerprints taken at the location of his original request by the original agency or by the Maryland State Police at the identified barrack. An individual must file a challenge within 10 days of the denial to inspect his record.

D. The Superintendent of the Maryland State Police has the authority to designate a review officer.

E. The Superintendent of the Maryland State Police shall set a review date within 30 days of the date the challenge was filed, and within the 30-day period the full set of fingerprints submitted by the person who challenged the record will be compared with the fingerprints on the arrest record.

F. The Superintendent of the Maryland State Police will issue to the individual and to the CRCR a written decision stating whether the individual filing the challenge is the individual in the record. A copy of the decision will be retained by the CRCR and copies will be disseminated by the CRCR to any other agency which is a party to the denial process.

G. If the Superintendent decides that the challenger is identical to the individual in the record, the challenger may, upon submission of the written decision of the Superintendent to the official who denied access to the record, view his record.

H. If the Superintendent decides that the challenger is not the individual in the record, the challenger may not be permitted to inspect the record.

I. The challenger or the agency maintaining the record may appeal the decision of the Superintendent, and this appeal shall be taken in accordance with the Administrative Procedure Act, Article 41, §§244, et. seq., Annotated Code of Maryland.

.07 Right of an Individual to Challenge Completeness, Contents, Accuracy, and Dissemination.

A. An individual who has inspected his criminal history record information may challenge the completeness, contents, accuracy, or dissemination of this information.

B. A fee of $5, payable to the Maryland State Police, shall be charged an individual for each challenge to the completeness, contents, accuracy, and dissemination of his criminal history record, unless the individual files a verified certificate of indigency.

C. The individual will submit Form CRCR002 as notice of his challenge to the CRCR and to the agency at which he inspected the information if other than the Maryland State Police. Upon receipt of the notice, the CRCR will conduct an examination of that part of the person's criminal history record information which has been challenged as to completeness, contents, accuracy, and dissemination. As part of the examination, the CRCR may require any criminal justice agency that was the source of challenged information to verify the information. The CRCR will advise the person of the results of its examination and its determination within 90 days after receipt of the individual's notice of challenge. This notice shall be in writing via Form CRCR003 and, if the challenge or any part of it is rejected, the notice will inform the person of his rights of appeal.

D. If the challenge is determined to be valid, the CRCR will make the appropriate correction on its record and notify any criminal justice or other agency which has custody of the incomplete or inaccurate information, of this correction. The criminal justice agency shall correct its records and certify to the CRCR that the correction was made.

E. A criminal justice agency or other agency required to ect any criminal history record information that had previously disseminated this incorrect information shall give written notice of the correction to any agency or individual to whom the information had been disseminated. The recipient agency or individual will promptly make the correction on its records, and certify to the disseminating agency that the correction was made.

F. If the individual's challenge to the completeness, contents, accuracy, or dissemination is denied by the CRCR, he may appeal the decision in accordance with the procedures outlined below.

G. A fee of $5, payable to the Maryland State Police, will be charged an individual for each request to appeal a denial of his record, unless the individual files a verified certificate of indigency.

H. Within 30 days of a denial, an individual will file Form CRCR002 to appeal a denial of a challenge with the Superintendent of the Maryland State Police and the local law enforcement agency which contributed or created the record if other than the Maryland State Police, and the CRCR.

I. The Superintendent has the authority to designate a hearing officer.

J. The Superintendent of the Maryland State Police shall set a hearing date within 30 days of the date the appeal was filed, and the hearing shall be held within 60 days of the date the appeal was filed.

K. Failure of an applicant to appear at the hearing shall be cause to deny the challenge.

L. At the challenge hearing, the applicant who filed the challenge and any agency party to the challenge may be represented by an attorney, may introduce additional evidence, and may interrogate persons responsible for recording or maintaining the criminal history record in question.

MICROFILMED From Best AVAILABLE COPY

M. The Superintendent of the Maryland State Police shall issue to the applicant and to the CRCR a written order stating the decision of the hearing. A copy of the order shall be retained by the CRCR and disseminated by CRCR to any other agency or person who is party to the hearing.

N. If the Superintendent's order concludes that the challenge to the completeness, contents, accuracy, or dissemination of the record is correct, the order will direct that the record be corrected. The CRCR and the local law enforcement agency which contributed or created the record shall correct its records and certify to the Superintendent that the correction was made.

O. A criminal justice agency required to correct any criminal history record information pursuant to §N, immediately above, that had previously disseminated this information, shall give written notice to the agency or person to whom the information was disseminated of the correction. That agency or person shall promptly make the correction on its records, and certify to the disseminating agency that the correction was made.

P. Any party to the matter may further appeal the decision of the Superintendent, and this appeal shall be taken in accordance with the Administrative Procedure Act, Article 41, §§244, et. seq., Annotated Code of Maryland.

.09 Collection.

A. The CRCR will collect and store CHRI from all criminal justice agencies or CHRI repositories in the State.

B. Receipt by CRCR of reported data must be organized so as to accurately reflect the processing of an individual through the criminal justice system and to insure complete, accurate, private, and secure records.

.10 Reporting.

A. Every criminal justice agency or CHRI repository shall report CHRI, whether collected manually or by means of an automated system, to the CRCR in accordance with the following provisions:

(1) Data pertaining to an arrest or the issuance of an arrest warrant shall be reported within 72 hours after the arrest is made or the warrant is issued whichever first occurs;

(2) Data pertaining to the release of a person after arrest without the filing of a charge shall be reported within 30 days after the person is released;

(3) Data pertaining to any other reportable event shall be reported within 60 days after occurrence of the event.

B. CHRI will be reported by all criminal justice agencies to CRCR in an organized manner that reflects the identification of the offender and the movements of that individual through the criminal justice system. Reports will conform to federal and State laws and rules and regulations as supplemented by operational procedures issued by CRCR relating to the completeness, accuracy, privacy, and security of CHRI.

.11 Dissemination of Criminal History Record Information.

A. A criminal justice agency and the CRCR may not disseminate criminal history record information except in accordance with federal and State laws and regulations and the rules promulgated pursuant to Article 27, §746, Annotated Code of Maryland.

B. Subject to the provisions of §(F), below, the CRCR and a criminal justice agency shall disseminate CHRI, be it conviction or non-conviction criminal history record information, to a criminal justice agency upon a request made in accordance with applicable rules and regulations adopted by the Secretary. A criminal justice agency may request this information from the CRCR or another criminal justice agency only if it has a need for the information:

(1) In the performance of its function as a criminal justice agency; or

(2) For the purpose of hiring or retaining its own employees and agents.

C. Subject to the provisions of §§(F) and (G), below, and except as otherwise authorized by §(E), below, the CRCR may not disseminate to a non-criminal justice federal, State or local government agency:

(1) Conviction CHRI unless the person or agency to whom the information is to be disseminated is expressly authorized by statute, ordinance, executive order, or court rule, decision, or order to grant, deny, suspend, revoke, or terminate a license, employment, or other right or privilege, and the statute, ordinance, order, or rule specifies the existence or non-existence of a prior conviction or other criminal conduct as a condition to the grant, denial, suspension, revocation, or termination of the license, employment, right, or privilege. References to "good moral character," "trustworthiness," or other less specific traits are sufficient to authorize dissemination where they are determined by the courts to be inclusive of criminal conduct; and,

(2) Non-conviction CHRI unless the person or agency to whom the information is to be disseminated is expressly authorized by statute, ordinance, executive order, court rule, decision, or order to grant, deny, suspend, revoke, or terminate a license, employment, or other right or privilege, and the statute, ordinance, executive order, or court rule, decision, or order specifies access to non-conviction CHRI in consideration of the decision to grant, deny, suspend, revoke, or terminate a license, employment, right, or privilege.

MICROFILMED FROM BEST AVAILABLE COPY

D. Subject to the provisions of §§(F) and (G), below, and except as otherwise authorized by §(E), below, the CRCR may not disseminate to a private non-governmental employer or the private employer's designated agent:

(1) Conviction CHRI unless the employer demonstrates to the Secretary that the activities or duties of the prospective employee or employee for whom the conviction CHRI is requested would bring the prospective employee or employee into such close and sensitive contact with the public that the use of the information in hiring, transfer, or promotion of the employee would serve to protect the safety or be in the best interests of the general public or bring the prospective employee or employee into such close and sensitive contact with the employer's enterprise as to endanger the goodwill or fiscal well-being of the enterprise.

E. The Secretary will establish a procedure whereby employers may petition for the right to be granted access to conviction CHRI consistent with §D(1), above. The petition shall require the employer to list the instances where access is desired and the reason for requesting the access consistent with this Regulation. The Secretary, with the advice of the Advisory Board, shall develop specific classes for which access consistent with this Regulation are to be provided and shall maintain for each class a list of all employers who have petitioned for and been granted access.

(1) Non-conviction CHRI unless the employer is expressly authorized by statute, ordinance, executive order, or court rule, order, or decision specifying the right of access to non-conviction CHRI and the purpose and conditions for access.

F. The following non-criminal justice persons and agencies may receive from CRCR conviction and non-conviction CHRI for the purpose and under the conditions stated:

(1) The Department of Personnel or other appointing authority of the federal, State, or local unit of government may receive this information for the purpose of employment suitability or eligibility for security clearances;

(2) The Maryland Public Defender or any defense counsel of record may receive this information for the purpose of the defense of a client in a pending criminal proceeding;

(3) A bail bondsman may receive this information relating to a client, if authorized by the Maryland rules;

(4) The Juvenile Services Administration may receive this information for the purposes of an investigation pursuant to the disposition of a juvenile case;

(5) The Governor's Commission on Law Enforcement and the Administration of Justice may receive this information for the purposes of research, evaluation, and statistical analysis of criminal activity, and that any statistical analyses derived from this information may not include the name of any individual or any other unique identifiers relating to the individual;

(6) A person or agency engaged in legitimate research, evaluation, or statistical analysis activities may, pursuant to an agreement with the Secretary or the Chief Judge of the Court of Appeals, receive this information necessary to these activities, but this information may not include the name of any individual;

(7) A person or agency under contract with a criminal justice agency to provide specific services required by the criminal justice agency to perform any of its criminal justice functions may, pursuant to an agreement with the Secretary, receive this information necessary in order to carry out its contract; and

(8) The Attorney Grievance Commission and any of its subunits, the Board of Law Examiners and any of its subunits, the Commission on Judicial Disabilities, and a Judicial Nominating Commission may receive and utilize CHRI for the purpose of exercising their respective functions in connection with lawyer discipline, bar admissions, judicial discipline, and judicial selection.

G. A criminal justice agency may not disseminate CHRI to another criminal justice agency until the disseminating agency has requested and received from CRCR verification that the information to be disseminated is complete, accurate, and current. The criminal justice agency or CRCR shall verify the identity of the criminal justice agency to which the disseminating agency intends to provide the information;

(1) CRCR shall maintain a record or log of the request showing the date the request was made, the information to be disseminated, the criminal justice agency receiving the information, and the date of the dissemination; and

(2) This Regulation does not apply if the receiving criminal justice agency demonstrates to a responsible official of the disseminating criminal justice agency or CRCR that a delay in the receipt of information from CRCR will unduly impede necessary action by the requesting criminal justice agency or will violate or materially impair a substantive right of the person about whom the information is needed. However, the disseminating agency shall maintain a log of each dissemination under these conditions, showing the date of dissemination, the information disseminated, the criminal justice agency to whom it was disseminated, and the date of the dissemination.

H. Only CRCR may disseminate CHRI to a non-criminal justice agency or individual. CRCR shall verify the identity of the agency or person requesting to receive the information and shall maintain a record or log of the request showing the date the request was made, the purpose for which the request was made, the information disseminated, the agency or person receiving the information, and the date of the dissemination.

I. CRCR, through agreement with another criminal justice agency, may specify the other criminal justice agency as a location at which a non-criminal justice agency or individual may inquire to CRCR for the purpose of receiving CHRI. The agreement may also provide for CRCR to authorize the criminal justice agency to disseminate to the non-criminal justice agency appropriate CHRI maintained by the criminal justice agency. Under these circumstances the disseminating criminal justice agency shall maintain a log of each dissemination, showing the date the request was made, the purpose for which the request was made, the information disseminated, the agency or person receiving the information, and the date of the dissemination. CRCR shall maintain in its log the fact that it authorized the criminal justice agency to disseminate the CHRI and the agency or individual to whom the CHRI was disseminated.

J. No agency or individual shall confirm the existence or non-existence of CHRI to any person or agency that would not be eligible to receive the information itself.

K. Any logs required to be kept under this Regulation shall be maintained for at least 3 years.

L. The use of CHRI by an authorized agency or individual is limited to the specific purpose or purposes stated in this section and may not be disseminated further except with specific authorization.

M. Where a request for the dissemination of CHRI is made by a criminal justice agency from another state, disseminations are to be limited to the purposes for which CHRI is disseminated to criminal justice agencies within the State of Maryland.

N. In addition to any other remedy or penalty authorized by law, the Secretary may determine any individual or agency to be in violation of the provisions of this Regulation and may take the necessary steps to enforce compliance with this section, including revocation of any agreement between the agency and CRCR as well as appropriate judicial or administrative proceedings.

.12 Security.

A. The Secretary adopts the specific federal regulations promulgated regarding security. These regulations were promulgated in the Federal Register, Volume 41, Number 55, dated March 19, 1976, and pursuant to Article 41, §256 H(a), Annotated Code of Maryland, the federal regulations are being reprinted as follows:

(A) Security—Wherever criminal history record information is collected, stored, or disseminated, each state shall insure that the following requirements are satisfied by security standards established by state legislation or in the absence of such legislation by regulations approved or issued by the Governor of the State:

(1) Where computerized data processing is employed, effective and technologically advanced software and hardware designs are instituted to prevent unauthorized access to such information.

(2) Access to criminal history record information system facilities, systems operating environments, data file contents whether while in use or when stored in a media library, and system documentation is restricted to authorized organizations and personnel.

(3)(A) Computer operations, whether dedicated or shared, which support criminal justice information systems, operate in accordance with procedures developed or approved by the participating criminal justice agencies that assure that:

(i) Criminal history record information is stored by the computer in such manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by non-criminal justice terminals.

(ii) Operation programs are used that will prohibit inquiry, record updates, or destruction of records, from any terminal other than criminal justice system terminals which are so designated.

(iii) The destruction of records is limited to designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information.

(iv) Operational programs are used to detect and store for the output of designated criminal justice agency employees all unauthorized attempts to penetrate any criminal history record information system, program, or file.

(v) The programs specified in (ii) and (iv) of this subsection are known only to criminal justice agency employees responsible for criminal history record information system control or individuals and agencies pursuant to a specific agreement with the criminal justice agency to provide such programs and the program(s) are kept continuously under maximum security conditions.

(vi) Procedures are instituted to assure that an individual or agency authorized direct access is responsible for (a) the physical security of criminal history record information under its control or in its custody and (b) the protection of such information from unauthorized access, disclosure, or dissemination.

(vii) Procedures are instituted to protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters.

(B) A criminal justice agency shall have the right to audit, monitor, and inspect procedures established above.

(4) The criminal justice agency will:

(A) Screen and have the right to reject for employment, based on good cause, all personnel to be authorized to have direct access to criminal history record information.

(B) Have the right to initiate or cause to be initiated administrative action leading to the transfer or removal of personnel authorized to have direct access to such information where such personnel violate the provisions of these regulations or other security requirements established for the collection, storage, or dissemination of criminal history record information.

(C) Institute procedures, where computer processing is not utilized, to assure that an individual or agency authorized direct access is responsible for:

(i) The physical security of criminal history record information under its control or in its custody: and

(ii) The protection of such information from unauthorized access, disclosure, or dissemination.

(D) Institute procedures where computer processing is not utilized to protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters.

(E) Provide that direct access to criminal history record information shall be available only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system.

(5) Each employee working with or having access to criminal history record information shall be made familiar with the substance and intent of these regulations.

B. In the event a breach of the physical security of CHRI or a failure to meet physical security standards of CHRI as stipulated in these regulations and as supplemented by operational policies issued by CRCR relating to the physical security of CHRI occurs, the Secretary of the Department of Public Safety and Correctional Services has the responsibility to insure that such a breach is corrected.

C. In the event a failure to comply with personnel policies relating to CHRI as stipulated in these regulations and as supplemented by personnel policies issued by CRCR relating to CHRI occurs, the Secretary of the Department of Public Safety and Correctional Services has the responsibility to insure that this failure is corrected.

D. In the event a breach of the operational security of the Criminal Justice Information System (as defined in Article 27, §743(g), Annotated Code), or a failure to meet the operating security standards of that system as stipulated in these regulations and as supplemented by operational procedures issued by CRCR relating to the security of operations in the Criminal Justice Information System occurs, the Secretary of the Department of Public Safety and Correctional Services has the responsibility to insure that this breach or failure is corrected.

E. In the event the privacy or confidentiality of CHRI has been intentionally or inadvertantly abused or where the potential for this abuse may exist, the Secretary of the Department of Public Safety and Correctional Services has the responsibility to insure that this abuse or potential for abuse is corrected.

.13 Auditing.

A. An audit of a random representative sample of State and local criminal justice agencies and repositories will be made annually by CRCR. The audit shall insure that CHRI is accurate and complete and that it is collected, reported, and disseminated in accordance with the provisions of Article 27, §§742—755, Annotated Code of Maryland. A quality control audit of a representative sample of CHRI will be made on a regular basis.

B. The CRCR will establish the methods, procedures, and standards for auditing criminal justice agencies and CHRI repositories.

C. Criminal justice agencies and CHRI repositories will retain and provide access to CHRI source documents, dissemination logs, security manuals, and other data as CRCR may deem necessary to perform an audit assuring adherence to the privacy, security, completeness, accuracy, and dissemination of CHRI.

D. Each criminal justice agency and CHRI repository will be subject to an on-site audit by CRCR to evaluate that agency's compliance with applicable rules, regulations, agreements, and laws pertaining to physical, personnel, and operational security, dissemination, and completeness and accuracy of CHRI.

E. Each criminal justice agency and CHRI repository will cooperate with CRCR in performing audits required by applicable federal and State laws and regulatons.

.14 Agreements.

A. Agreements will be developed between the CRCR and criminal justice agencies and CHRI repositories which will incorporate the principles and requirements of applicable federal and State laws and regulations pertaining to the privacy, security, completeness, accuracy, and dissemination of CHRI.

ROBERT J. LALLY
Secretary
Department of Public Safety
and Correctional Services

[Md. R. Doc. No. 77-1531. Filed at Div. of St. Doc. Nov. 18, 1977.
Filed at AELR Comm. Nov. 18, 1977.]

MICROFILMED FROM BEST
AVAILABLE COPY

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	6.168	X	
2. Privacy and Security	6.170	X	
3. Dissemination Regulations	6.172 276.100 Reg. 2.11 Reg. 2.17 Reg. 1.15-1.20	X X X X X	
4. Inspection	6-175 66A.2 Reg. 3.1-3.7	X X X	
5. Challenge	6.175 66A.2 Reg. 3.8-3.12	X X X	
6. Judicial Review	6-176		
7. Purge: Non-Conviction	Reg. 1.21(b)	X	
8. Purge: Conviction	Reg. 1.21(b)	X	
9. Seal: Non-Conviction	276-100C Reg. 1.17-1.18 Re-. 1.21(a)	X X X	
10. Seal: Conviction	94C-34 276-100A	X X	
11. Remove Disqualification	276.100A 276.100C	X X	
12. Deny CJ Record	94C-34 276-100A 276-100C	X X X	
13. Research Access	6-173		
14. Accurate & Complete	6-171 6-175 66A-2 127-73	X X X X	
15. Dedicate			
16. Civil Remedy	6-127	X	
17. Criminal Penalty	6.128	X	
18. Public Records	66-10 66A-1	X X	
19. Separate Files	6-167	X	
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security	6.171 6.174 66A.2 Reg. 3.13-3.14	X X X X	
23. Transaction Logs	6-172	X	
24. Train Employees	66A-2	X	
25. List Systems			
26. F.O.I. Including CJ	66A-1	X	
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

-209-

Massachusetts

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	28.211	X	
2. Privacy and Security			
3. Dissemination Regulations	15.243 28.251	X X	
4. Inspection	15.233	X	
5. Challenge			
6. Judicial Review			
7. Purge: Non-Conviction	28.243 780.223	X X	
8. Purge: Conviction			
9. Seal: Non-Conviction	335.347	X	
10. Seal: Conviction			
11. Remove Disqualification	335.347	X	
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete	28.243 28.255 28.261	X X X	
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty	750.492 28.246	X X	
18. Public Records	750.491 15.231	X X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination	15.243	X	
22. Security			
23. Transaction Logs			
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ	15.231	X	
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	15.1641	X	
2. Privacy and Security	15.169	X	
3. Dissemination Regulations	15.1641 364.04 Reg. III, V	X X	X
4. Inspection	15.165 Reg. VI	X	X
5. Challenge	15.165 Reg. VI	X	X
6. Judicial Review	15.165 15.0425	X X	
7. Purge: Non-Conviction			
8. Purge: Conviction	364.04	X	
9. Seal: Non-Conviction	299C.11	X	
10. Seal: Conviction	364.04	X	
11. Remove Disqualification	364.03	X	
12. Deny CJ Record			
13. Research Access	15.1641	X	
14. Accurate & Complete	299C.10 15.1641	X X	
15. Dedicate			
16. Civil Remedy	15.166	X	
17. Criminal Penalty	15.167 16.169	X X	
18. Public Records	15.17	X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination	HB738-20(3) 15.162	X	X
22. Security	15.1641	X	
23. Transaction Logs	Reg. VI		X
24. Train Employees			
25. List Systems	15.163	X	
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ	15.1641	X	

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

H.F.No. 738
CHAPTER No. 328

AN ACT

relating to collection and dissemination of data; establishing a presumption that government data is public; classifying data; extending the period of time during which emergency classifications of data may be made; clarifying the duties of the responsible authority; providing for temporary classification of data; providing remedies; amending Minnesota Statutes 1978, Sections 15.162, Subdivisions 1, 2a, 6, and by adding subdivisions; 15.163; 15.1642, Subdivisions 1, 2, 3, 5, and by adding a subdivision; 15.166; 15.17, Subdivision 4; and Chapter 15, by adding sections; repealing Minnesota Statutes 1978, Sections 15.1641; 15.1642, Subdivision 4; and 15.169.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1978, Chapter 15, is amended by adding a section to read:

[15.1611] [GOVERNMENT DATA.] Subdivision 1. All state agencies, political subdivisions and statewide systems shall be governed by sections 15.1611 to 15.1698.

Subd. 2. Sections 15.1611 to 15.1698 may be cited as the "Minnesota government data practices act."

Sec. 2. Minnesota Statutes 1978, Section 15.162, Subdivision 1, is amended to read:

15.162 [COLLECTION, SECURITY AND DISSEMINATION OF

MICROFILMED FROM BEST AVAILABLE COPY

RECORDS; DEFINITIONS.] Subdivision 1. As used in sections ~~15.162 to 15.1672~~ 15.1611 to 15.1698, the terms defined in this section have the meanings given them.

Sec. 3. Minnesota Statutes 1978, Section 15.162, Subdivision 2a, is amended to read:

Subd. 2a. "Confidential data on individuals" means data which is: (a) made not public by statute or federal law applicable to the data and is inaccessible to the individual subject of that data; or (b) collected by a civil or criminal investigative agency as part of an active investigation undertaken for the purpose of the commencement of a legal action, provided that the burden of proof as to whether such investigation is active or in anticipation of a legal action is upon the agency. Confidential data on individuals does not include arrest information that is reasonably contemporaneous with an arrest or incarceration. The provision of clause (b) shall terminate and cease to have force and effect with regard to the state agencies, political subdivisions, statewide systems, covered by the ruling, upon the granting or refusal to grant ~~an emergency~~ a temporary classification pursuant to section 15.1642 of both criminal and civil investigative data, or on July 31, ~~1979~~ 1980, whichever occurs first.

Sec. 4. Minnesota Statutes 1978, Section 15.162, Subdivision 6, is amended to read:

Subd. 6. "Responsible authority" in a state agency or statewide system means the state official designated by law or by the commissioner as the individual responsible for the collection, use and dissemination of any set of data on individuals, government data, or summary data. "Responsible authority" in any political subdivision means the individual designated by the governing body of that

political subdivision as the individual responsible for the collection, use, and dissemination of any set of data on individuals, government data, or summary data, unless otherwise provided by state law.

Sec. 4a. Minnesota Statutes 1978, Section 15.162, is amended by adding a subdivision to read:

Subd. 10. "Designee" means any person designated by a responsible authority to be in charge of individual files or systems containing government data and to receive and comply with requests for government data.

Sec. 5. Minnesota Statutes 1978, Section 15.162, is amended by adding a subdivision to read:

Subd. 11. "Government data" means all data collected, created, received, maintained or disseminated by any state agency, political subdivision, or statewide system regardless of its physical form, storage media or conditions of use.

Sec. 6. Minnesota Statutes 1978, Section 15.162, is amended by adding a subdivision to read:

Subd. 12. "Person" means any individual, partnership, corporation, association, business trust, or a legal representative of an organization.

Sec. 7. Minnesota Statutes 1978, Chapter 15, is amended by adding a section to read:

[15.1621] [ACCESS TO GOVERNMENT DATA.] Subdivision 1. [PUBLIC DATA.] All government data collected, created, received, maintained or disseminated by a state agency, political subdivision, or statewide system shall be public unless classified by statute, or temporary classification pursuant to section 15.1642, or federal law, as not public, or with respect to data on individuals, as private or confidential. The responsible authority in every state agency, political subdivision and statewide system shall

MICROFILMED FROM BEST AVAILABLE COPY

keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use. Photographic, photostatic, microphotographic, or microfilmed records shall be considered as accessible for convenient use regardless of the size of such records.

Subd. 2. [PROCEDURES.] The responsible authority in every state agency, political subdivision, and statewide system shall establish procedures, consistent with sections 15.1611 to 15.1698, to insure that requests for government data are received and complied with in an appropriate and prompt manner. Full convenience and comprehensive accessibility shall be allowed to researchers including historians, genealogists and other scholars to carry out extensive research and complete copying of all records containing government data except as otherwise expressly provided by law.

A responsible authority may designate one or more designees.

Subd. 3. [REQUEST FOR DATA.] Upon request to a responsible authority or designee, a person shall be permitted to inspect and copy government data at reasonable times and places, and if the person requests, he shall be informed of the data's meaning. The responsible authority or designee shall provide copies of government data upon request. The responsible authority may require the requesting person to pay the actual costs of making, certifying and compiling the copies. If the responsible authority or designee is not able to provide copies at the time a request is made he shall supply copies as soon as reasonably possible.

If the responsible authority or designee determines that the requested data is classified so as to deny the

requesting person access, the responsible authority or designee shall so inform the requesting person orally at the time of the request, and in writing as soon thereafter as possible, and shall cite the statute, temporary classification, or federal law on which the determination is based.

Sec. 8. Minnesota Statutes 1978, Section 15.163, is amended to read:

15.163 [DUTIES OF RESPONSIBLE AUTHORITY.] Subdivision 1. [ANNUAL INVENTORY OF RECORDS.] ~~On or before August 1, 1976,~~ The responsible authority shall prepare a public document containing his name, title and address, and a description of each category of record, file, or process relating to private or confidential data on individuals maintained by his state agency, statewide system, or political subdivision. Forms used to collect private and confidential data shall be included in the public document. Beginning August 1, 1977 and annually thereafter, the responsible authority shall update the public document and make any changes necessary to ~~keep it accurate~~ maintain the accuracy of the document. The document shall be available from the responsible authority to the public in accordance with the provisions of sections 7 and 15.17.

Subd. 2. [COPIES TO COMMISSIONER.] The commissioner may require responsible authorities to submit copies of the public document required in subdivision 1, and may request additional information relevant to data collection practices, policies and procedures.

Subd. 3. [STANDARDS FOR COLLECTION AND STORAGE.] Collection and storage of public, private or confidential data on individuals and use and dissemination of private and confidential data on individuals shall be limited to that necessary for the administration and management of

MICROFILMED FROM BEST AVAILABLE COPY

programs specifically authorized by the legislature, local governing body or mandated by the federal government.

Subd. 4. [COLLECTION AND USE OF DATA; GENERAL RULE.] Private or confidential data on an individual shall not be collected, stored, used or disseminated by political subdivisions, statewide systems or state agencies for any purposes other than those stated to the individual at the time of collection in accordance with section 15.165, except as provided in this subdivision.

(a) Data collected prior to August 1, 1975, and which have not been treated as public data, may be used and disseminated for the purposes for which the data was originally collected or for purposes which are specifically approved by the commissioner as necessary to public health, safety, or welfare.

(b) Private or confidential data may be used and disseminated to individuals or agencies specifically authorized access to that data by state or federal law subsequent to the collection of the data.

(c) Private or confidential data may be used and disseminated to individuals or agencies subsequent to the collection of the data when specifically approved by the commissioner as necessary to carry out a function assigned by law.

(d) Private data may be used by and disseminated to any person or agency if the individual subject or subjects of the data have given their informed consent. Whether a data subject has given informed consent shall be determined by rules of the commissioner. Informed consent shall not be deemed to have been given by an individual subject of the data by the signing of any statement authorizing any person or agency to disclose information about him or her to an insurer or its authorized representative, unless the

statement is:

(1) In plain language

(2) Dated;

(3) Specific in designating the particular persons or agencies the data subject is authorizing to disclose information about him or her;

(4) Specific as to the nature of the information he or she is authorizing to be disclosed;

(5) Specific as to the persons or agencies to whom he or she is authorizing information to be disclosed;

(6) Specific as to the purpose or purposes for which the information may be used by any of the parties named in clause (5), both at the time of the disclosure and at any time in the future;

(7) Specific as to its expiration date which should be within a reasonable period of time, not to exceed one year except in the case of authorizations given in connection with applications for life insurance or noncancelable or guaranteed renewable health insurance and identified as such, two years after the date of the policy.

Subd. 5. [DATA PROTECTION.] The responsible authority shall (1) establish procedures to assure that all data on individuals is accurate, complete, and current for the purposes for which it was collected; and (2) establish appropriate security safeguards for all records containing data on individuals.

Subd. 6. [CONTRACTS.] Except as provided in section 15, subdivision 5, in any contract between a governmental unit subject to sections 15.1611 to 15.1698 and any person, when the contract requires that data on individuals be made available to the contracting parties by the governmental unit, that data shall be administered consistent with sections 15.1611 to 15.1698. A contracting party shall

FILMED FROM BEST AVAILABLE COPY

maintain the data on individuals which it received according to the statutory provisions applicable to the data.

Subd. 7. [PREPARATION OF SUMMARY DATA.] The use of summary data derived from private or confidential data on individuals under the jurisdiction of one or more responsible authorities shall be permitted. Unless classified pursuant to section 15.1642, summary data is public. The responsible authority shall prepare summary data from private or confidential data on individuals upon the request of any person, provided that the request is in writing and the cost of preparing the summary data is borne by the requesting person. The responsible authority may delegate the power to prepare summary data (1) to the administrative officer responsible for any central repository of summary data; or (2) to a person outside of its agency if the person, in writing, sets forth his purpose and agrees not to disclose, and the agency reasonably determines that the access will not compromise private or confidential data on individuals.

Subd. 8. [PUBLICATION OF ACCESS PROCEDURES.] The responsible authority shall prepare a public document setting forth in writing the rights of the data subject pursuant to section 15.165 and the specific procedures in effect in the state agency, statewide system or political subdivision for access by the data subject to public or private data on individuals.

Subd. 9. [INTERGOVERNMENTAL ACCESS OF DATA.] A responsible authority shall allow another responsible authority access to data classified as not public only when the access is authorized or required by statute or federal law. An agency that supplies government data under this subdivision may require the requesting agency to pay the

actual cost of supplying the data.

Data shall have the same classification in the hands of the agency receiving it as it had in the agency providing it.

Sec. 9. Minnesota Statutes 1978, Section 15.1642, Subdivision 1, is amended to read:

15.1642 [TEMPORARY CLASSIFICATION.] Subdivision 1. [APPLICATION.] The responsible authority of a state agency, political subdivision or statewide system may apply to the commissioner for permission to classify data or types of data on individuals as private or confidential, or data not on individuals as non-public, for its own use and for the use of other similar agencies, political subdivisions or statewide systems on ~~an emergency~~ a temporary basis until a proposed statute can be acted upon by the legislature. The application for ~~emergency~~ temporary classification is public.

Upon the filing of an application for ~~emergency~~ temporary classification, the data which is the subject of the application shall be deemed to be classified as set forth in the application for a period of ~~30~~ 45 days, or until the application is disapproved or granted by the commissioner, whichever is earlier.

Sec. 10. Minnesota Statutes 1978, Section 15.1642, Subdivision 2, is amended to read:

Subd. 2. [CONTENTS OF APPLICATION FOR PRIVATE OR CONFIDENTIAL DATA.] An application for ~~emergency~~ temporary classification of data on individuals shall include and the applicant shall have the burden of clearly establishing ~~by~~ ~~clear and convincing evidence the following information:~~ ~~(a)~~ that no statute currently exists which either allows or forbids classification as private or confidential; and either

~~(b)~~ (a) That data similar to that for which the

MICROFILMED FROM BEST AVAILABLE COPY

~~emergency~~ temporary classification is sought has been treated as either private or confidential by other state agencies or political subdivisions, and by the public; ~~and~~ or

~~(c)~~ (b) That a compelling need exists for immediate ~~emergency~~ temporary classification, which if not granted could adversely affect the public interest or the health, safety, well being or reputation of the data subject.

Sec. 11. Minnesota Statutes 1978, Section 15.1642, is amended by adding a subdivision to read:

Subd. 2a. [CONTENTS OF APPLICATION FOR NON-PUBLIC DATA.] An application for temporary classification of government data not on individuals shall include and the applicant shall have the burden of clearly establishing that no statute currently exists which either allows or forbids classification as non-public; and either

(a) That data similar to that for which the temporary classification is sought has been treated as non-public by other state agencies or political subdivisions, and by the public; or

(b) Public access to the data would render unworkable a program authorized by law; or

(c) That a compelling need exists for immediate temporary classification, which if not granted could adversely affect the health, safety or welfare of the public.

Sec. 12. Minnesota Statutes 1978, Section 15.1642, Subdivision 3, is amended to read:

Subd. 3. [DETERMINATION.] The commissioner shall either grant or disapprove the application for ~~emergency~~ temporary classification within ~~30~~ 45 days after it is filed. If the commissioner disapproves the application, he shall set forth in detail his reasons for the disapproval,

and shall include a statement of what classification he believes is appropriate for the data which is the subject of the application. ~~Ten~~ Twenty days after the date of the commissioner's disapproval of an application, the data which is the subject of the application shall become public data ~~on individuals~~, unless the responsible authority submits an amended application for ~~emergency~~ temporary classification which requests the classification deemed appropriate by the commissioner in his statement of disapproval or which sets forth additional information relating to the original proposed classification. Upon the filing of an amended application, the data which is the subject of the amended application shall be deemed to be classified as set forth in the amended application for a period of ~~15~~ 20 days or until the amended application is granted or disapproved by the commissioner, whichever is earlier. The commissioner shall either grant or disapprove the amended application within ~~15~~ 20 days after it is filed. Five working days after the date of the commissioner's disapproval of the amended application, the data which is the subject of the application shall become public data ~~on individuals~~. No more than one amended application may be submitted for any single file or system ~~which contains data on individuals~~.

If the commissioner grants an application for ~~emergency~~ temporary classification, it shall become effective immediately, and the complete record relating to the application shall be submitted to the attorney general, who shall review the classification as to form and legality. Within ~~20~~ 25 days, the attorney general shall approve the classification, disapprove a classification as confidential but approve a classification as private, or disapprove the classification. If the attorney general disapproves a

MICROFILMED FROM BEST AVAILABLE COPY

classification, the data which is the subject of the classification shall become public data five working days after the date of the attorney general's disapproval.

Sec. 13. Minnesota Statutes 1978, Section 15.1642, Subdivision 5, is amended to read:

Subd. 5. [EXPIRATION OF TEMPORARY CLASSIFICATION.] Emergency classifications granted before the effective date of this section are redesignated as temporary classifications. All ~~emergency~~ temporary classifications granted under this section prior to the effective date of this section and still in effect shall expire on July 31, ~~1979~~ 1980. ~~No emergency classifications shall be granted after July 31, 1979.~~ For purposes of this section, all temporary classifications granted prior to December 1, 1979, shall be treated as if they were granted in 1979.

Subd. 5a. On or before January 15 of each year, the commissioner shall submit all temporary classifications granted in the prior year in bill form for legislative consideration. Unless enacted by law, each temporary classification so submitted shall expire 18 months after being granted and may not be renewed more than once.

Sec. 14. Minnesota Statutes 1978, Section 15.166, is amended to read:

15.166 [CIVIL PENALTIES.] Subdivision 1. Notwithstanding section 466.03, a political subdivision, responsible authority or state agency which violates any provision of sections ~~15.162 to 15.1671~~ 15.1611 to 15.1698 is liable to a person who suffers any damage as a result of the violation, and the person damaged may bring an action against the political subdivision, responsible authority, statewide system or state agency to cover any damages sustained, plus costs and reasonable attorney fees. In the case of a willful violation, the political subdivision,

statewide system or state agency shall, in addition, be liable to exemplary damages of not less than $100, nor more than ~~$1,000~~ $10,000 for each violation. The state is deemed to have waived any immunity to a cause of action brought under sections ~~15.162 to 15.1671~~ 15.1611 to 15.1698.

Subd. 2. A political subdivision, responsible authority, statewide system or state agency which violates or proposes to violate sections ~~15.162 to 15.1671~~ 15.1611 to 15.1698 may be enjoined by the district court. The court may make any order or judgment as may be necessary to prevent the use or employment by any person of any practices which violate sections ~~15.162 to 15.1671~~ 15.1611 to 15.1698.

Subd. 3. An action filed pursuant to this section may be commenced in the county in which the individual alleging damage or seeking relief resides, or in the county wherein the political subdivision exists, or, in the case of the state, any county.

Subd. 4. In addition to the remedies provided in subdivisions 1 to 3 or any other law, any aggrieved person may bring an action in district court to compel compliance with sections 15.1611 to 15.1698 and sections 10 to 12 and may recover costs and disbursements, including reasonable attorney's fees, as determined by the court. If the court determines that a request for government data is frivolous and without merit and a basis in fact, it may award reasonable costs and attorney fees to the responsible authority. The matter shall be heard as soon as possible. In an action involving a request for government data under section 7 or 15.165, the court may inspect in camera the government data in dispute, but shall conduct its hearing in public and in a manner that protects the security of data classified as not public.

MICROFILMED FROM BEST AVAILABLE COPY

Sec. 15. Minnesota Statutes 1978, Chapter 15, is amended by adding a section to read:

[15.1691] [WELFARE DATA.] Subdivision 1. [DEFINITIONS.] As used in this section:

(a) "Individual" means an individual pursuant to section 15.162, subdivision 4, but does not include a vendor of services.

(b) "Program" includes all programs for which authority is vested in a component of the welfare system pursuant to statute or federal law.

(c) "Welfare system" includes the department of public welfare, county welfare boards, human services boards, community mental health boards, state hospitals, state nursing homes, and persons, agencies, institutions, organizations and other entities under contract to any of the above agencies to the extent specified in the contract.

Subd. 2. [GENERAL.] Unless the data is summary data or a statute specifically provides a different classification, data on individuals collected, maintained, used or disseminated by the welfare system is private data on individuals, and shall not be disclosed except:

(a) Pursuant to section 15.163;

(b) Pursuant to a valid court order;

(c) Pursuant to a statute specifically authorizing access to the private data;

(d) To an agent of the welfare system, including appropriate law enforcement personnel, who are acting in the investigation, prosecution, criminal or civil proceeding relating to the administration of a program;

(e) To personnel of the welfare system who require the data to determine eligibility, amount of assistance, and the need to provide services of additional programs to the individual;

(f) To administer federal funds or programs; or

(g) Between personnel of the welfare system working in the same program.

Subd. 3. [INVESTIGATIVE DATA.] Data collected, maintained, used or disseminated by the welfare system in an investigation, authorized by statute and relating to the enforcement of rules or law, is confidential pursuant to section 15.162, subdivision 2a, and shall not be disclosed except:

(a) Pursuant to section 15.163;

(b) Pursuant to statute or valid court order;

(c) To a party named in a civil or criminal proceeding, administrative or judicial, for preparation of defense.

After presentation in court, the data shall be public data on individuals to the extent reflected in court records.

Subd. 4. [LICENSING DATA.] All data pertaining to persons licensed or registered under the authority of the commissioner of public welfare, except for personal and personal financial data submitted by applicants and licensees under the home day care program and the family foster care program, is public data. Personal and personal financial data on home day care program and family foster care program applicants and licensees is private data pursuant to section 15.162, subdivision 5a.

Subd. 5. [MEDICAL DATA; CONTRACTS.] Data relating to the medical, psychiatric or mental health of any person, including diagnosis, progress charts, treatment received, case histories, and opinions of health care providers, which is collected, maintained, used or disseminated by a private health care provider under contract to any agency of the welfare system is private data on individuals, and

MICROFILMED FROM BEST AVAILABLE COPY

is subject to the provisions of sections 15.162 to 15.167, and this section, except that the provisions of section 15.165, subdivision 3, shall not apply. Access to medical data referred to in this subdivision by the individual who is the subject of the data is subject to the provisions of section 144.335.

Subd. 6. [OTHER DATA.] Data collected, used, maintained or disseminated by the welfare system that is not data on individuals is public pursuant to sections 7 and 15.17.

Sec. 16. Minnesota Statutes 1978, Chapter 15, is amended by adding a section to read:

[15.1698] [MEDICAL DATA.] Subdivision 1. [DEFINITION.] As used in this section, "directory information" means name of the patient, date admitted, general condition, and date released.

Subd. 2. [ACCESS TO RECORDS.] Access to medical data in the possession of a political subdivision, state agency, or statewide system, by the individual who is the subject of the data is subject to the provisions of section 144.335.

Subd. 3. [PUBLIC HOSPITALS; DIRECTORY INFORMATION.] If a person is a patient in a hospital operated by a state agency or political subdivision pursuant to legal commitment, directory information is public data. If a person is a patient other than pursuant to commitment in a hospital controlled by a state agency or political subdivision, directory information is public data unless the patient requests otherwise, in which case it is private data on individuals.

Directory information about an emergency patient who is unable to communicate which is public under this subdivision shall not be released until a reasonable effort is made to notify the next of kin. Although an individual

has requested that directory information be private, the hospital may release directory information to a law enforcement agency pursuant to a lawful investigation pertaining to that individual.

Sec. 17. Minnesota Statutes 1978, Chapter 15, is amended by adding a section to read:

[15.1692] [PERSONNEL DATA.] Subdivision 1. As used in this section, "personnel data" means data on individuals collected because the individual is or was an employee of or an applicant for employment by a state agency, statewide system or political subdivision.

Subd. 2. Except for employees described in subdivision 6, the following personnel data on current and former employees of a state agency, statewide system or political subdivision is public: name; actual gross salary; salary range; actual gross pension; the value and nature of employer paid fringe benefits; the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary; job title; job description; education and training background; previous work experience; date of first and last employment; the status of any complaints or charges against the employee, whether or not the complaint or charge resulted in a disciplinary action; and the final disposition of any disciplinary action and supporting documentation.

Subd. 3. Except for applicants described in subdivision 6, the following personnel data on current and former applicants for employment by a state agency, statewide system or political subdivision is public: veteran status; relevant test scores; rank on eligible list; job history; education and training; and work availability. Names of applicants shall be private data except when certified as eligible for appointment to a

MICROFILMED FROM BEST AVAILABLE COPY

vacancy.

Subd. 4. Personnel examinations and answer keys are confidential, except pursuant to a valid court order.

Subd. 5. All other personnel data is private data on individuals, except pursuant to a valid court order.

Subd. 6. All personnel data maintained by any state agency, statewide system or political subdivision relating to an individual employed as or an applicant for employment as an undercover law enforcement officer is private data on individuals.

Sec. 18. Minnesota Statutes 1978, Chapter 15, is amended by adding a section to read:

[15.1693] [EDUCATIONAL DATA.] Subdivision 1. As used in this section:

(a) "Educational data" means data on individuals maintained by a public educational agency or institution or by a person acting for the agency or institution which relates to a student.

Records of instructional personnel which are in the sole possession of the maker thereof and are not accessible or revealed to any other individual except a substitute teacher, and are destroyed at the end of the school year, shall not be deemed to be government data.

Records of a law enforcement unit of a public educational agency or institution which are maintained apart from education data and are maintained solely for law enforcement purposes, and are not disclosed to individuals other than law enforcement officials of the jurisdiction are confidential; provided, that education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

Records relating to a student who is employed by a public educational agency or institution which are made and

maintained in the normal course of business, relate exclusively to the individual in that individual's capacity as an employee, and are not available for use for any other purpose are classified pursuant to section 17.

(b) "Student" includes a person currently or formerly enrolled or registered, and applicants for enrollment or registration at a public educational agency or institution.

(c) "Substitute teacher" means an individual who performs on a temporary basis the duties of the individual who made the record, but does not include an individual who permanently succeeds the maker of the record in his position.

Subd. 2. Except as provided in subdivision 4, educational data is private data on individuals and shall not be disclosed except as follows:

(a) Pursuant to section 15.163;

(b) Pursuant to a valid court order;

(c) Pursuant to a statute specifically authorizing access to the private data;

(d) To disclose information in health and safety emergencies pursuant to the provisions of 20 U.S.C., Section 1232g(b)(1)(I) and 45 C.F.R., Section 99.36 which are in effect on the effective date of this section; or

(e) Pursuant to the provisions of 20 U.S.C., Sections 1232g(b)(1), (b)(4)(A), (b)(4)(B), (b)(1)(B), (b)(3) and 45 C.F.R., Sections 99.31, 99.32, 99.33, 99.34 and Sec. 99.35 which are in effect on the effective date of this section.

Subd. 3. A student shall not have the right of access to private data provided in section 15.165, subdivision 3, as to financial records and statements of his parents or any information contained therein.

Subd. 4. Information designated as directory information pursuant to the provisions of 20 U.S.C.,

MICROFILMED FROM BEST AVAILABLE COPY

Section 1232g and regulations adopted pursuant thereto which are in effect on the effective date of this section is public data on individuals.

Sec. 19. Minnesota Statutes 1978, Chapter 15, is amended by adding a section to read:

[15.1694] [ATTORNEYS.] Notwithstanding the provisions of sections 15.162 to 15.17, the use, collection, storage, and dissemination of data by an attorney acting in his professional capacity for the state, a state agency or a political subdivision shall be governed by statutes, rules, and professional standards concerning discovery, production of documents, introduction of evidence, and professional responsibility; provided that this section shall not be construed to affect the applicability of any statute, other than sections 15.162 to 15.17, which specifically requires or prohibits disclosure of specific information by the attorney, nor shall this section be construed to relieve any responsible authority, other than the attorney, from his duties and responsibilities pursuant to sections 15.1611 to 15.17.

Sec. 20. Minnesota Statutes 1978, Chapter 15, is amended by adding a section to read:

[15.1695] [LAW ENFORCEMENT DATA.] Subdivision 1. When collected, created, or maintained by law enforcement agencies including municipal police departments, county sheriff departments, the bureau of criminal apprehension, the Minnesota state patrol, the peace officers standards and training board, or public prosecutors or defenders:

(a) Data on participants in crime prevention programs including lists of property with identification numbers or evaluations or recommendations related to structural security against unauthorized entry is private; and

(b) Data contained on incident complaint reports,

variously called logs or dockets, comprising a chronological record of events, shall be public; provided that data on individuals which could reasonably be used to determine the identity of an undercover agent, informant, or victim of criminal sexual conduct shall be private data on individuals; provided further that any other data classified by law as private or confidential contained in incident complaint reports shall remain private or confidential data.

Subd. 2. Nothing in this chapter shall prohibit the exchange of information by law enforcement agencies provided the exchanged information is pertinent and necessary to the requesting agency in initiating, furthering, or completing an investigation.

Subd. 3. Information reflecting deliberative processes or investigative techniques of law enforcement agencies is confidential; provided that information, reports, or memoranda which have been adopted as the final opinion or justification for decision of a law enforcement agency are public.

Subd. 4. Nothing in this section shall be held to expand or limit the scope of discovery available at law to any party in a civil, criminal, or administrative proceeding.

Sec. 2. Minnesota Statutes 1978, Chapter 15, is amended by adding a section to read:

[15.1696] [DATA ACCESS FOR CRIME VICTIMS.] The prosecuting authority shall release investigative data collected by a law enforcement agency to the victim of a criminal act or his legal representative upon written request unless the prosecuting authority reasonably believes:

(a) That the release of that data will interfere with

MICROFILMED FROM BEST AVAILABLE COPY

the investigation; or

(b) That the request is prompted by a desire on the part of the requestor to engage in unlawful activities.

Sec. 22. Minnesota Statutes 1978, Chapter 15, is amended by adding a section to read:

[15.1697] [ELECTED OFFICIALS; CORRESPONDENCE; PRIVATE DATA.] Correspondence between individuals and elected officials is private data on individuals, but may be made public by either the sender or the recipient.

Sec. 23. Minnesota Statutes 1978, Section 15.17, Subdivision 4, is amended to read:

Subd. 4. [ACCESSIBLE TO PUBLIC.] ~~Every custodian of public records shall keep them in such arrangement and condition as to make them easily accessible for convenient use. Photographic, photostatic, microphotographic or microfilmed records shall be considered as accessible for convenient use regardless of the size of such records. Except as otherwise expressly provided by law, he shall permit all public records in his custody to be inspected, examined, abstracted, or copied at reasonable times and under his supervision and regulation by any person, and he shall, upon the demand of any person, furnish certified copies thereof on payment in advance of fees not to exceed the fees prescribed by law. Full convenience and comprehensive accessibility shall be allowed to researchers including historians, genealogists and other scholars to carry out extensive research and complete copying of all public records except as otherwise expressly provided by law.~~ Access to records containing government data is governed by section 7.

Sec. 24. [REPEALER.] Minnesota Statutes 1978, Sections 15.1641; 15.1642, Subdivision 4; and 15.169 are repealed.

Sec. 25. [EFFECTIVE DATE.] Sections 1 to 6, 8 to 22, and 24 are effective July 1, 1979. Sections 7 and 23 are effective January 1, 1980.

MICROFILMED FROM BEST AVAILABLE COPY

H. F. No. 738

Rod Searle

Rod Searle
Speaker of the House of Representatives

Edward J. Gearty

Edward J. Gearty
Presidents of the Senate.

Passed the House of Representatives this 21st day of May in the year of Our Lord one thousand nine hundred and seventy-nine.

Edward A. Burdick

Edward A. Burdick
Chief Clerk, House of Representatives.

Passed the Senate this 21st day of May in the year of Our Lord one thousand nine hundred and seventy-nine.

Patrick E. Flahaven

Patrick E. Flahaven
Secretary of the Senate.

Approved June 5, 1979

Albert H. Quie

Albert H. Quie
Governor of the State of Minnesota.

Filed June 5, 1979

Joan Anderson Growe

Joan Anderson Growe
Secretary of State.

MINNESOTA

DEPARTMENT OF PUBLIC SAFETY
MINNESOTA BUREAU OF CRIMINAL APPREHENSION

SUBJECT: Policy on Criminal History Files maintained by the BCA.

PURPOSE

It is the purpose of this paper to make constant, the policies of the Criminal Justice Information Systems Section of the Bureau of Criminal Apprehension, with State and Federal statutes, rules, and policies. The Criminal History Record Information must be collected, stored, and disseminated in a regular and similar way throughout the state. This systemized manner of keeping records must ensure completeness, integrity, accuracy, and security of such information, but most importantly, it must protect individual privacy.

POLICY

I. Information in the Bureau of Criminal Apprehension's Criminal History Files:

A. Entries of criminal history data and updating of criminal records are only made by the Bureau of Criminal Apprehension (BCA), Criminal Justice Information Systems Section. Access devices in other criminal justice agencies are limited to inquiries and responses thereto.

B. Data stored in the BCA Criminal History file includes personal identification data, as well as recorded data concerning each of the individual's major steps through the criminal justice process. A record concerning an individual is initiated upon the first arrest of that individual for serious and/or significant offenses. Each arrest initiates a cycle in the record, which cycle will be complete upon the offender's discharge from the criminal justice process in disposition of that arrest.

C. Each cycle in an individual's record is based upon fingerprint identification. The criminal fingerprint card documenting this identification will be stored at the BCA. At least one criminal fingerprint card will be in the files of the FBI Identification Division to support the criminal history record at the national level.

D. The data with respect to current arrests entered in the BCA files is restricted to serious and/or significant violations. Excluded from the BCA file are juvenile offenders as defined by state law (unless the juvenile is tried in court as an adult); charges of vagrancy; certain public order offenses, i.e., disturbing the peace, curfew violations, loitering, false fire alarm; traffic violations which are not felonies or gross misdemeanors, and non-specific charges of suspicion or investigation.

E. Data included in the files is limited to that with the characteristics of public records, i.e.:

1. Recorded by officers of public agencies or divisions thereof directly and principally concerned with crime prevention, apprehension, adjudication or rehabilitation of offenders.

MICROFILMED FROM BEST
AVAILABLE COPY

2. Recording must have been made in satisfaction of public duty.

3. The public duty must have been directly relevant to criminal justice responsibilities of the agency.

F. Social history data is not contained in the BCA Criminal History files, e.g., narcotics civil commitment or mental hygiene commitment. If, however, such commitments are part of the criminal justice process, then they will become part of the file.

G. Criminal History files are purged/expunged/sealed in strict accordance with applicable State and Federal Statutes. If a purge/expunge has the effect of removing all arrest cycles, all information including personal identification data is removed from the BCA Criminal History file.

H. Criminal History records are not maintained on individuals 75 years of age or older; any such records will be removed from the files and destroyed. Criminal History records will not be established on subjects 75 years or older. Fingerprints received will be returned to contributor.

II. Steps to Assure Accuracy of Stored Information

A. The BCA makes continuous checks on records being entered in the files to assure standards and criteria are being met.

B. The BCA maintains a careful and permanent program of data verification including:

1. Systematic audits conducted to insure that files have been regularly and accurately updated.

2. Where errors or points of incompleteness are detected, the BCA takes immediate action to correct or complete the record.

III. Access to Criminal History Data

A. Direct access, meaning the ability to access the BCA criminal files, either by manual or computer terminal device is permitted only for criminal justice agencies in the discharge of their official, mandated responsibilities. Agencies that are permitted direct access to BCA Criminal History data include:

1. Police forces and departments at all governmental levels that are responsible for enforcement of general criminal laws. This should be understood to include highway patrols and similar agencies.

2. Prospective agencies and departments at all governmental levels.

3. Courts at all governmental levels with a criminal or equivalent jurisdiction.

4. Correction departments at all governmental levels, including corrective institutions and probation departments.

5. Parole commissions and agencies at all governmental levels.

6. Agencies at all governmental levels which have as a principle function, the collection and provision of fingerprint identification information.

7. State control terminal agencies which have as a sole function by statute the development and operation of a criminal justice information system.

8. Regional or local governmental organizations established pursuant to statute which have as their sole function the collection and processing of criminal justice information and whose policy and governing boards have, as a minimum, a majority composition of members representing criminal justice agencies.

B. Indirect Access.

1. Such other agencies and individuals authorized pursuant to a statute, ordinance, executive order or court rule.

IV. Control of Criminal Justice Systems

All computers, electronic switches and manual terminals interfaced directly with the Minnesota Criminal Justice Information System (CJIS) computer for the exchange of Criminal History information must be under the management control of criminal justice agencies. Management control is defined as, (1) having the authority to set and enforce policy concerning computer operations, (2) having power to veto for legitimate security purposes which personnel can be permitted to work in a defined area where such information is stored, collected, or disseminated, and (3) having the authority to select and supervise all personnel authorized to have direct access to such information.

It is not necessarily required that the entire computer installation be set aside for criminal justice purposes. Specific hardware which would have to be used solely for criminal justice purposes would include the storage devices (such as disc, tape, or mass memory units of other kinds), terminals employed in accessing the criminal offender records, modems or other devices used to interface equipment with communications systems, and the hardware unit which has the function of controlling access to the records by receiving the inquiry and initiating and response to the inquiry.

V. Use of Criminal History Data

A. Criminal History data on an individual from the BCA file is made available to criminal justice agencies authorized under State/Federal Statutes or executive order for criminal justice purposes. This precludes the dissemination of such data for use in connection with licensing or local or state employment, unless such dissemination is pursuant to MSS 15.162, MSS299C.13, and U.S.C. Title 28, Chapter 1.

B. Individuals and agencies for the express purpose of research, evaluative or statistical activities pursuant to an agreement with the BCA. The agreement shall specifically authorize access to data, limit the use of data to research, evaluative or statistical purposes, ensure the confidentiality and security of the data consistant with U.S.C. Title 28, Chapter 1. Proposed programs must be reviewed by the BCA to assure their propriety and to determine that proper security is being provided. All non-criminal justice agency requests involving

the identities of individuals in conjunction with their Criminal History records must be approved by the BCA.

The BCA retains the right to monitor any research project approved and to terminate same if a violation of the above is detected.

C. Should any information be cerified that any agency has received Criminal History information and has disclosed that information to an unauthorized source, immediate action will be taken by the BCA to discontinue criminal history service to that agency.

D. Agencies rights to direct access encompass only requests reasonably connected with their criminal justice responsibilities.

E. The BCA will make ckecks, as necessary, concerning criminal history inquiries made of the files to detect possible misuse.

F. Criminal justice agencies having access to BCA Criminal History files must agree to be subject to all sanctions contained in MSS 15.166, MSS 15.167, and U.S.C. Title 28, Chapter 1.

G. Criminal History records shall contain caveats to the effect, "This record is furnished based on name and date of birth only, and may or may not be identical to the individual you are inquiring on", and "Restricted information not for public dissemination".

VI. Individual's Right to Challenge, Access, or Review Record

The person's right to see and challenge the contents of his record is an integral part of the Criminal History Record system of the BCA.

If an individual has a criminal record supported by fingerprints and that record has been entered in the BCA file, it is available to that individual for review, upon presentation of appropriate identification, and in accordance with applicable State/Federal administrative and statutory regulations.

Appropriate identification includes being fingerprinted for the purpose of insuring that he is the individual that he purports to be. The record on file will then be verified as his through comparison of fingerprints.

A. Procedure

1. All requests for review must be made by the subject of his record directly to the BCA or through a law enforcement agency which has access to the BCA Criminal History files.

2. Any law enforcement agency who has access to the BCA Criminal History files and receives a request from an individual to review their record maintained by the BCA if any, can obtain the record by forwarding the application and fingerprints to the BCA. The BCA shall forward the record, if any, to the review site within 15 days after receipt of application. The individual will then be afforded the opportunity to review their record pursuant to MSS 15.165 and U.S. Code Title 28, Chapter 1.

3. A person who believes his Criminal History record is incomplete or inaccurate shall notify in writing the BCA, describing the nature of the disagreement. The BCA will then contact the criminal justice agency who was the

contributor of the questioned information for their verification of the data and make changes as appropriate. If a change occurs, the BCA shall notify all previous recipients of the information. If the BCA determines that there is no evidence of error in the individual's record, this determination is appealable in accordance with provisions set forth in MSS 15.165 and U.S.C. Title 28, Chapter 1.

VII. Physical, Technical, and Personnel Security Measures

The following security measures are the minimum to be adopted by all criminal justice agencies having access to the BCA Computerized Criminal History file and/or the transmission of criminal history data through the MINCIS. These measures are designed to prevent unauthorized access to the system data and/or unauthorized use of data obtained from the files.

A. Computer Centers

1. The criminal justice agency computer site must have adequate physical security to protect against any unauthorized personnal gaining access to the computer equipment or to any of the stored data.

2. Since personnel at computer centers can access data stored in the system, they must be screened thoroughly under the authority and supervision of the responsible criminal justice agency. This screening must also apply to non-criminal justice maintenance or technical personnel.

3. All visitors to these computer centers must be accompanied by staff personnel at all times.

4. Computers having access to CJIS must employ effective and technologically advanced software and hardware designs to prevent unauthorized access to such information.

5. Computers having access to the CJIS must maintain a record of all transactions against the criminal history file in the same manner the CJIS computer logs all transactions. The CJIS identifies each specific agency entering or receiving information and maintains a record of those transactions. The CJIS transaction record will be monitored and reviewed on a regular basis to detect any possible misuse of criminal history data.

B. Communications

1. Lines/channels being used to transmit criminal history information must be dedicated solely to criminal justice use, i.e. there must be no terminals belonging to agencies outside the criminal justice system sharing these lines/channels.

2. Audio response terminals and radio devices, whether digital or voice, shall not be used for the transmission of criminal history information via omnidirectional broadcasting beyond that information necessary to effect an immediate identification or to ensure adequate safety for officers.

C. Terminal devices having access to BCA Computerized Criminal History Files

1. All agencies having terminals on the CJIS are required to physically place these terminals in secure locations within the authorized agency.

2. The agencies having terminals with access to Computerized Criminal History records must have terminal operators screened and restrict access to the terminal to a minimum number of authorized employees.

3. Copies of criminal history data obtained from terminal devices must be afforded security to prevent any unauthorized access to, or use of, that data.

4. All remote terminals on CJIS must maintain, for 90 days, a hard copy of all criminal history inquiries with notation of individual making request for record.

VIII. Organization and Administration

A. Each criminal justice agency shall sign a written agreement with the BCA to conform with Computerized Criminal History records policy before dissemination of the criminal history records is permitted. This will allow for control over the data and give assurance of security.

B. The rules and procedures governing direct terminal access to Computerized Criminal History data shall apply equally to all participants to the system, including the Federal, State and local criminal justice agencies.

C. All criminal justice agencies having direct access to Computerized Criminal History data shall permit an inspection team from the BCA to conduct appropriate inquiries with regard to any allegations received of violations of security or adherance to criminal history records, policies and regulations. the inspection team may include at least one representative of the FBI/NCIC.

Feb 11, 1977
Date

Paul J. Tschida
Paul J. Tschida, Superintendent

MINNESOTA

DEPARTMENT OF PUBLIC SAFETY
MINNESOTA BUREAU OF CRIMINAL APPREHENSION

SUBJECT: Procedures relating to Criminal History Record Policies.

DEFINITIONS

Conviction - Means any of the following accepted and recorded by the court: (1) A plea of guilty, (2) a verdict of guilty by a jury or a finding of guilty by the court.

Crime - Conduct which is prohibited by statute and for which the actor may be sentenced to imprisonment with or without a fine.

Expunge - To destroy or obliterate; it implies not a legal act, but a physical annihilation.

Felony - A crime for which a sentence of imprisonment for more than one year may be imposed.

Gross Misdemeanor - Any crime which is not a felony or misdemeanor.

Misdemeanor - A crime for which a sentence of not more than 90 days or a fine of not more than $300 or both may be imposed.

Purge - To cleanse; to clear; to clear or exonerate from some charge of imputation of guilt, or from a contempt.

Seal - To close against inspection of the contents.

Serious and/or significant offenses - All criminal offenses with the following exceptions: drunkenness, vagrancy, disturbing the peace, curfew violation, loitering, false fire alarm, non-specific charges of suspicion or investigation, traffic violations (except fingerprints will be included for manslaughter).

PROCEDURES

I. A. RECORD ESTABLISHMENT

1. Verify completeness of data on fingerprint card(s).
2. Determine if arrest charge data qualifies for inclusion in the Criminal History File.
3. If data does not qualify for inclusion, the fingerprint card(s) are returned to submitting criminal justice agency.
4. Search for previous record based on name and date of birth and fingerprint classification.
5. If no previous record is on file, a new state record is established with the current arrest, and the FBI card is forwarded to Washington, D.C.

MICROFILMED FROM best AVAILABLE COPY

6. If a previous record is located, that record will be updated with the current arrest cycle. If previous record is not on file with the FBI, the fingerprint card is forwarded to Washington, D.C.

7. Prepare Criminal Record reply to fingerprint card submitting agency if requested.

B. CRIMINAL HISTORY RECORD UPDATES

1. Prosecution Information Update

a. Verify completeness and accuracy of data submitted.

b. If submitted data is inaccurate or incomplete, contact is made with the submitting agency for verification.

c. Verify the identity of submitted information with the previous record and cycle on file.

d. If previous record or cycle is not on file, contact controlling law enforcement agency for supporting fingerprint card identification data for the related information. Prosecution information will be held until final judicial disposition is received; if supporting data has not been received the information is destroyed.

e. After verification of identity, establish and/or update criminal record.

f. If prosecution disposition indicates no complaint filed, arrest data is updated and disposition will reflect that no formal complaint was filed.

2. Judicial Information Update

a. Verify completeness and accuracy of data submitted.

b. If submitted data is inaccurate, or incomplete, contact is made with the submitting agency for verification.

c. Verify identity of submitted information with previous record and cycle on file.

d. If previous record cycle not on file, contact submitting law enforcement agency for supporting fingerprint card identification data for the related information. Judicial data will be held until final disposition is received. If supporting data is not received the prosecution and judicial information is destroyed.

e. After verification of identity, establish and/or update criminal record.

3. Custody Supervision Information Update

a. Verify completeness and accuracy of data submi

b. If submitted data is inaccurate or incomplete, contact is made with the submitting agency for verification.

c. Verify identity of submitted information with previous record and cycle on file.

d. If previous record or cycle not on file, and supporting identification data has not been received, correction information is destroyed.

e. After verification of identity, establish and/or update criminal record.

4. Updating of Criminal History Records pursuant to 638.02 (Commutation of Sentence)

a. Verify identification of individual referred to in Certificate of Pardon with Criminal History Records.

b. If identification not established, Certificate of Pardon is returned indicating no record on file.

c. If record is located, specific cycle indicated in Certificate of Pardon is updated with notification of Commutation.

C. EXPUNGING/PURGING/SEALING OF CRIMINAL HISTORY RECORDS

1. Sealing, pursuant to 152.18 (Discharge and Dismissal) and 242.31 (Restoration of Civil Rights - youths)

a. Verify identity of individual referred to in court order with Criminal History Record.

b. If identification is not established, court order is returned indicating no record on file.

c. If record is located, the specific cycle indicated in the court order is sealed (record will remain sealed, unless a court order is received requiring the record be opened as provided by M.S.S. 152.18/242.31).

d. Copy of court order is forwarded to FBI, Washington, D.C.

e. FBI return forwarded to court of issuance.

f. Return reply to court indicating BCA's compliance with order.

g. Notice is sent to all agencies having previously received a copy of the Criminal History Record indicating the record is no longer valid and must be destroyed.

2. Sealing pursuant to 638.02 (Pardon Extraordinary)

a. Verify identification of individual referred to in Certificate of Pardon and/or court order with Criminal History Records.

b. If identification not established, Certificate of Pardon and/or court order is returned indicating no record on file.

c. If record is located, specific cycle indicated in Certificate of Pardon and/or court order is sealed (record will remain sealed, unless a court order is received requiring the record be opened as provided by M.S.S. 638.02).

d. Copy of court order forwarded to FBI, Washington, D.C.

e. FBI return forwarded to court of issuance.

f. Return reply to court indicating BCA's compliance with order.

g. Notice is sent to all agencies having previously received a copy of the Criminal History Record indicating the record is no longer valid and must be destroyed.

3. Expungement of Criminal History Data Pursuant to M.S.S. 299C.11 (Prints furnished to Bureau by Sheriff's and Chief's of Police)

a. Verify identification of individual with Criminal History Records.

b. If no record on file, request returned to the requestor.

c. If record is located, determine if request is in compliance with 299C.11.

d. If in compliance, all identification and other related information for the specific cycle are removed from the Criminal History Record and returned to the requestor.

e. Notice is sent to all agencies having previously received a copy of the Criminal History Record indicating the record is no longer valid and must be destroyed.

4. Purging of Criminal History Records in Accordance with Bureau Policy I. H

a. Prior to dissemination or update, if the determination is made that the individual is 75 years of age or older, the identification and all related data is removed from the files and destroyed.

D. MISCELLANEOUS COURT ORDERS

1. Verify identification of individual referred to in court order with Criminal History Records.

2. If identification not established, court order is returned, indicating no record on file.

3. If record is located, specific cycle indicated in court order will be processed in accordance with provisions of the court.

4. Copy of court order forwarded to FBI, Washington, D.C.

5. FBI return forwarded to court of issuance.

6. Return reply to court indicating BCA's compliance with order.

7. Notice is sent to all agencies having previously received a copy of the

Criminal History Record indicating the record is no longer valid and must be destroyed.

II. A. ACCESS TO CRIMINAL HISTORY RECORDS BY NON-CRIMINAL JUSTICE AGENCIES

List of agencies authorized to Receive CHRI by Statute or Executive Order:

INDIVIDUALS OR AGENCIES	PERMITTED PURPOSES	CATEGORIES OF CHRI	STATUTORY CITATIONS
1. Commissioner of Administration	Refuse civil service examination or eligibility for state government employment	Crime of moral turpitude conviction	43.14
2. Commissioner of Insurance	Issue, revoke, suspend, renew license for adjustor, appraiser, or public adjustor solicitor	Felony conviction	72B.08
3. Department of Commerce; Commisisoner of Securities	Deny, suspend or revoke license for broker dealer or investment advisor	Felony and enumerated misdemeanor convictions	80A.07
4. County Auditor	Deny and revoke specified licenses for taking of game or fish	Chapters 97 to 102 convictions	98.52
5. Board of Medical Examiners	Deny, revoke or limit license to physicians, surgeons, or osteopaths.	Felony conviction	147.021
6. Board of Chiropractic Examiners	Grant or revoke license to chiropractors	Crime or moral turpitude conviction	148.10
7. Board of Nursing	Deny, revoke or suspend license to registered nurses	Felory or gross misdemeanor conviction	148.261
8. Board of Nursing	Deny, revoke or suspend license to practical nurses	Felony or gross misdemeanor conviction	148.297
9. Board of Medical Examiners	Suspend, revoke, renew or restrict license to massage personnel	Crime of moral turpitude conviction	148.41
10. Board of Optometry	Revoke or suspend optometrist's right to practice	Any criminal conviction	148.57
11. Board of Medical Examiners	Deny, revoke or limit license to physical therapist	Felony or crime or moral turpitude conviction	148.75

MINNESOTA

	INDIVIDUALS OR AGENCIES	PERMITTED PURPOSES	CATEGORIES OF CHRI	STATUTORY CITATIONS
12.	Board of Health	Grant renew, suspend or revoke license to embalmer	Crime of moral turpitude conviction	149.05
13.	Board of Dentistry	Suspend or revoke license to dentist or dental hygenist	Felony or crime of moral turpitude conviction	150A.08
14.	Board of Pharmacy	Deny, revoke, or suspend license to pharmacist	Felony or crime of moral turpitude conviction	151.06
15.	Board of Registration and Examination in Podiatry	Cancellation of podiatrist's registration	Any criminal conviction	153.07
16.	Board of Hair Dressing and Beauty Culture Examiners	Grant, revoke, suspend license to beauticians	Felony conviction	155.16
17.	Veterinary Examining Board	Suspend or revoke license to veterinarian	Felony or crime of moral turpitude conviction	156.081
18.	Board of Education; Commissioner of Public Safety	Grant license to school bus drivers	Established by regulation	171.321
19.	Department of Labor and Industry	Issue license to employment agent, agency or counselor	Fraud or any felony conviction	184.33
20.	Private Detective and Protective Agency Licensing Board	Issue and revoke licenses to private detectives and protective agents	Felony and enumerated crimes conviction	326.331
21.	Commissioner of Banks	Deny license to collection agencies	Crime of moral turpitude conviction	332.16
22.	Department of Commerce - Consumer Services Section	Issue or renew license to collection agencies	Felony conviction	332.33
23.	Commissioner of Aeronautics	Issue, suspend, revoke license or certification of registration to commercial air operations	Fraud, forgery, or theft convictions	360.018

Feb 11, 1977
Date

Paul J. Tschida
Paul J. Tschida, Superintendent

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	E.O. 201	X	
2. Privacy and Security			
3. Dissemination Regulations			
4. Inspection			
5. Challenge			
6. Judicial Review			
7. Purge: Non-Conviction			
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete			
15. Dedicate			
16. Civil Remedy	25-53-59	X	
17. Criminal Penalty			
18. Public Records	25-41-11	X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security	25-53-5	X	
23. Transaction Logs			
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ	25-41-3	X	

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

M — SS — SS — dd —

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	E.O.	X	
2. Privacy and Security			
3. Dissemination Regulations	Reg. 2.1.3, 5.2.1	X	
4. Inspection	549.151 Reg. 6.1.1	X X	
5. Challenge	Reg. 6.2.1, 6.2.2	X	
6. Judicial Review	Reg. 6.2.1, 6.2.2	X	
7. Purge: Non-Conviction	610.100	X	
8. Purge: Conviction			
9. Seal: Non-Conviction	610.100	X	
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record	610.100	X	
13. Research Access			
14. Accurate & Complete	57.103 57.105 Reg. 2.3.2	X X X	
15. Dedicate			
16. Civil Remedy	Reg. 1.4.3	X	
17. Criminal Penalty	109.180 601.115	X X	
18. Public Records	109.180 109.190	X X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security	E.O. Reg. 5.1.1, 5.3.1	X X	
23. Transaction Logs	Reg. 2.3.2	X	
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

M - 900376 - 1

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	SB271-9(7) SB271,-23 82A-1207	X	X X
2. Privacy and Security			
3. Dissemination Regulations	SB271-10,11,12 21 82-417	X	X
4. Inspection	SB271-19		X
5. Challenge	SB271-20		X
6. Judicial Review			
7. Purge: Non-Conviction	80-2005		X
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete	SB271-6,9 80-2005	X	X
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty			
18. Public Records			
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security	SB271-14 to 18		X
23. Transaction Logs	SB271-20		X
24. Train Employees	SB271-18(3) 80-2006 82-421	X X	X
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

SB 0271

AN ACT TO REGULATE THE COLLECTION, STORAGE, AND DISSEMINATION OF CRIMINAL JUSTICE INFORMATION; TO PROVIDE FOR PRIVACY OF THE INFORMATION IN CERTAIN CIRCUMSTANCES AND PROCEDURES FOR REQUESTING CERTAIN INFORMATION; TO REQUIRE PHOTOGRAPHING AND FINGERPRINTING OF PERSONS UNDER CERTAIN CIRCUMSTANCES; AND TO REPEAL SECTIONS 44-2-103, 44-2-203, AND 44-2-204, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [This act] may be cited as the "Montana Criminal Justice Information Act of 1979".

Section 2. Purpose. The purpose of [this act] is to require the photographing and fingerprinting of persons under certain circumstances, to ensure the accuracy and completeness of criminal history information, and to establish effective protection of individual privacy in criminal justice information recordkeeping.

Section 3. Definitions. As used in [this act], the following definitions apply:

(1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice information maintained by criminal justice agencies.

(2) "Administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It

MICROFILMED FROM BEST AVAILABLE COPY

includes criminal identification activities and the collection, storage, and dissemination of criminal justice information.

(3) "Confidential criminal justice information" means:

(a) criminal investigative information;

(b) criminal intelligence information;

(c) fingerprints and photographs;

(d) criminal justice information or records made confidential by law; and

(e) any other criminal justice information not clearly defined as public criminal justice information.

(4) (a) "Criminal history record information" means information about individuals collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints, indictments, or informations and dispositions arising therefrom; sentences; correctional status; and release. It includes identification information, such as fingerprint records or photographs, unless such information is obtained for purposes other than the administration of criminal justice.

(b) Criminal history record information does not include:

(i) records of traffic offenses maintained by the division of motor vehicles, department of justice; or

(ii) court records.

(5) (a) "Criminal intelligence information" means information associated with an identifiable individual, group,

SB 271

organization, or event compiled by a criminal justice agency:

(i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting potential criminal operation, or producing an estimate of future major criminal activities; or

(ii) in relation to the reliability of information including information derived from reports of informants or investigators or from any type of surveillance.

(b) Criminal intelligence information does not include information relating to political surveillance or criminal investigative information.

(6) "Criminal investigative information" means information associated with an individual, group, organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a crime or crimes. It includes information about a crime or crimes derived from reports of informants or investigators or from any type of surveillance. It does not include criminal intelligence information.

(7) "Criminal justice agency" means:

(a) any court with criminal jurisdiction;

(b) any state or local government agency designated by statute or by a governor's executive order to perform as its principal function the administration of criminal justice; or

(c) any local government agency not included under subsection (7)(b) that performs as its principal function the

MICROFILMED FROM BEST AVAILABLE COPY

administration of criminal justice pursuant to an ordinance or local executive order.

(8) "Criminal justice information" means information relating to criminal justice collected, processed, or preserved by a criminal justice agency. It does not include the administrative records of a criminal justice agency.

(9) "Criminal justice information system" means a system, automated or manual, operated by federal, regional, state, or local governments or governmental organizations for collecting, processing, preserving, or disseminating criminal justice information. It includes equipment, facilities, procedures, and agreements.

(10) (a) "Disposition" means information disclosing that criminal proceedings against an individual have terminated and describing the nature of the termination or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to bring charges or criminal proceedings have been concluded, abandoned, or indefinitely postponed.

(b) Particular dispositions include but are not limited to:

(i) conviction at trial or on a plea of guilty;

(ii) acquittal;

(iii) acquittal by reason of mental disease or defect;

(iv) acquittal by reason of mental incompetence;

(v) the sentence imposed, including all conditions attached thereto by the sentencing judge;

(vi) deferred imposition of sentence with any conditions of deferral;

(vii) nolle prosequi;

(viii) nolo contendere plea;

(ix) deferred prosecution or diversion;

(x) bond forfeiture;

(xi) death;

(xii) release as a result of a successful collateral attack;

(xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil action for determination of mental incompetence or mental illness;

(xiv) a finding of civil incompetence or mental illness;

(xv) exercise of executive clemency;

(xvi) correctional placement on probation or parole or release; or

(xvii) revocation of probation or parole.

(c) A single arrest of an individual may result in more than one disposition.

(11) "Dissemination" means the communication or transfer of criminal justice information to individuals or agencies other than the criminal justice agency that maintains such information. It includes confirmation of the existence or nonexistence of criminal

SE 271

MICROFILMED FROM BEST AVAILABLE COPY

justice information.

(12) "Public criminal justice information" means information, except confidential criminal justice information:

(a) made public by law;

(b) of court records and proceedings;

(c) of convictions, deferred sentences, and deferred prosecutions;

(d) of postconviction proceedings and status;

(e) originated by a criminal justice agency, including:

(i) initial offense reports;

(ii) initial arrest records;

(iii) bail records; and

(iv) daily jail occupancy rosters;

(f) considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or

(g) statistical information.

(13) "State repository" means the recordkeeping systems maintained by the department of justice pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and disseminated.

(14) "Statistical information" means data derived from records in which individuals are not identified or identification is deleted and from which neither individual identity nor any other unique characteristic that could identify an individual is ascertainable.

SS 271

Section 4. Relationship to other statutes. Laws requiring disclosure of public records, writings, or information are not superseded by [this act] unless clearly inconsistent with its specific language. Laws requiring confidentiality of information contained in records or writings are not superseded by [this act], which applies only when information may be disclosed consistent with such laws.

Section 5. Scope of authority to collect, process, and preserve criminal justice information. A criminal justice agency may collect, process, and preserve only that criminal justice information which is necessary for the performance of its authorized functions.

Section 6. Photographs and fingerprints. (1) The following agencies may, if authorized by subsections (2) through (5), collect, process, and preserve photographs and fingerprints:

(a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's office, or both;

(b) the department of institutions; and

(c) the department of justice.

(2) The department of institutions may photograph and fingerprint anyone under the jurisdiction of the division of corrections or its successor.

(3) A criminal justice agency described in subsection (1)(a) shall photograph and fingerprint a person who has been arrested or noticed or summoned to appear to answer an information or

MICROFILMED FROM BEST AVAILABLE COPY

indictment if:

(a) the charge is the commission of a felony;

(b) the identification of an accused is in issue; or

(c) it is required to do so by court order.

(4) Whenever a person charged with the commission of a felony is not arrested, he shall submit himself to the sheriff, chief of police, or other concerned law enforcement officer for fingerprinting at the time of his initial appearance in court to answer the information or indictment against him.

(5) A criminal justice agency described in subsection (1)(a) may photograph and fingerprint an accused if he has been arrested for the commission of a misdemeanor, except that an individual arrested for a traffic, regulatory, or fish and game offense may not be photographed or fingerprinted unless he is incarcerated.

(6) Within 10 days the originating agency shall send the state repository a copy of each fingerprint taken on a completed form provided by the state repository.

(7) The state repository shall compare the fingerprints received with those already on file in the state repository. If it is determined that the individual is wanted or is a fugitive from justice, the state repository shall at once inform the originating agency. If it is determined that the individual has a criminal record, the state repository shall send the originating agency a copy of the individual's complete criminal history record.

(8) Photographs and fingerprints taken shall be returned by

SB 271

the state repository to the originating agency, which shall return all copies to the individual from whom they were taken:

(a) if a court so orders; or

(b) upon the request of the individual:

(i) if no charges were filed;

(ii) if a misdemeanor charge did not result in a conviction; or

(iii) if the individual was found innocent of the offense charged.

Section 7. Records — form, contents, limits on use. A criminal justice agency originating initial offense reports, initial arrest records, bail records, or daily jail occupancy rosters may maintain a chronological or numerical record of these items. These records may not contain any prior criminal history record information and may not be used to gain access to any other public criminal justice information.

Section 8. Record preservation. Unless required by federal law, expunging, purging, or destroying of criminal justice information is not required based on the length of time such records are held.

Section 9. Procedures to ensure accuracy of criminal history records. In order to ensure complete and accurate criminal history record information:

(1) the department of justice shall maintain a centralized state repository of criminal history record information to serve

MICROFILMED FROM BEST AVAILABLE COPY

all criminal justice agencies in the state;

(2) dispositions resulting from formal proceedings in a court having jurisdiction in a criminal action against an individual who has been photographed and fingerprinted under [section 6] shall be reported to the originating agency and the state repository within 15 days. If the dispositions can readily be collected and reported through the court system, the dispositions may be submitted to the state repository by the administrative office of the courts.

(3) an originating agency shall advise the state repository within 30 days of all dispositions concerning the termination of criminal proceedings against an individual who has been photographed and fingerprinted under [section 6];

(4) the department of institutions shall advise the state repository within 30 days of all dispositions subsequent to conviction of an individual who has been photographed and fingerprinted under [section 6];

(5) each criminal justice agency shall query the state repository prior to dissemination of any criminal history record information to ensure the timeliness of the information. When no final disposition is shown by the state repository records, the state repository shall query the source of the document or other appropriate source for current status. Inquiries shall be made prior to any dissemination except in those cases in which time is of the essence and the repository is technically incapable of

SB 271

responding within the necessary time period. If time is of the essence, the inquiry shall still be made and the response shall be forwarded as soon as it is received.

(6) each criminal justice agency shall ensure that all its criminal justice information is complete, accurate, and current; and

(7) the department of justice shall adopt rules for criminal justice agencies other than those that are part of the judicial branch of government to implement this section. The department of justice may adopt rules for the same purpose for the judicial branch of government if the supreme court consents to the rules.

Section 10. Dissemination of public criminal justice information. (1) There are no restrictions on the dissemination of public criminal justice information except for the following:

(a) whenever a record or index is compiled by name or universal identifier from a manual or automated system, only information about convictions, deferred prosecutions, or deferred sentences is available to the public.

(b) whenever the conviction record reflects only misdemeanors or deferred prosecutions and whenever there are no convictions except for traffic, regulatory, or fish and game offenses for a period of 5 years from the date of the last conviction, no record or index may be disseminated pursuant to subsection (1)(a). However, the original documents are available to the public from the originating criminal justice agency.

SC 271

MICROFILMED FROM BEST AVAILABLE COPY

(2) All public criminal justice information is available from the agency that is the source of the original documents and that is authorized to maintain the documents according to applicable law. These documents shall be open, subject to the restrictions in this section, during the normal business hours of the agency. A reasonable charge may be made by a criminal justice agency for providing a copy of public criminal justice information.

Section 11. Dissemination of criminal history record information that is not public criminal justice information. Criminal history record information may not be disseminated to agencies other than criminal justice agencies unless:

(1) the information is disseminated with the consent or at the request of the individual about whom it relates according to procedures specified in [sections 19 and 20];

(2) a district court considers dissemination necessary;

(3) the information is disseminated in compliance with [section 13]; or

(4) the agency receiving the information is authorized by law to receive it.

Section 12. Dissemination of confidential criminal justice information. Dissemination of confidential criminal justice information is restricted to criminal justice agencies or to those authorized by law to receive it. A criminal justice agency that accepts confidential criminal justice information assumes equal

responsibility for the security of such information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

Section 13. Development of statistical information -- agreements as to access. (1) An individual or agency with the express purpose of developing statistical information may have access to criminal history record information pursuant to an agreement with a criminal justice agency. The agreement shall contain, but need not be limited to, the following provisions:

(a) specific authorization for access to specific information;

(b) a limitation on the use of the information to research, evaluative, or statistical purposes;

(c) assurance of the confidentiality and security of the information; and

(d) sanctions for violations of the agreement or this section.

(2) Proposed agreements and any completed research, statistical, or evaluative study or product developed from the use of statistical information is subject to review and approval by the department of justice to ensure compliance with [this act].

Section 14. Criminal justice information system security. Provisions for the recording, preservation, dissemination, and management of court records are made by statute and may be

MICROFILMED FROM BEST AVAILABLE COPY

supplemented by supreme court rule. Any other criminal justice agency shall protect the security of any criminal justice information system, automated or manual, under its control by taking reasonable precautions and establishing procedures to protect the system and data stored in the system from damage and for the prevention of and recovery from hazards such as fire, flood, power failure, and entry into secure areas by unauthorized persons.

Section 15. Automated equipment security. In an automated criminal justice information system, information shall be collected, processed, and preserved on a computer dedicated solely to criminal justice information, except that, if this is impractical, a central computer may be used if adequate safeguards are built into the criminal justice information system to prevent unauthorized inquiry, modification, or destruction of criminal justice information in conformity with the current federal regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

Section 16. Computer programming security. Procedures for each automated criminal justice information system shall assure that the information is secured by the following programming techniques and security procedures:

(1) the assignment of a terminal identification code to each terminal authorized to access the criminal justice information system;

SB 271

(2) the assignment of a unique identification number to each authorized terminal operator, which number must be used to gain access to the files;

(3) the maintenance of a record of each inquiry to identify the inquiring agency, the program used to make the inquiry, the date of the inquiry, and the name of the file being queried;

(4) computer programming controls to ensure that each terminal user can obtain only that information which the user is authorized to use;

(5) creation and use of a safe place for storage of duplicate computer files;

(6) built-in program controls to ensure that each terminal is limited to the appropriate or authorized information that can be input, modified, or canceled from it;

(7) destruction or safeguarding of system documentation and data input forms; and

(8) creation of reports to provide for an audit trail and periodic review of file accessed, modifications, and deletions. All criminal justice intelligence information shall be identified as such.

Section 17. Manual equipment security. In a manual criminal justice information system, information shall be protected as follows:

(1) provision of adequate physical security;

(2) marking of all criminal justice intelligence information

SB 271

MICROFILMED FROM BEST AVAILABLE COPY

and precautions against unauthorized copying; and

(3) establishment of a log of each external inquiry to reflect the identity of the inquirer, the date of inquiry, and the name of the files being queried.

Section 16. Personnel security. Each automated or manual criminal justice information system, except those that are or may be maintained by courts of criminal jurisdiction, shall establish the following procedures to ensure that personnel security is achieved and maintained:

(1) Applicants for employment and persons presently employed to work with or in a computer center or manual system that processes criminal justice information are subject to investigation by the employing agency to establish their honesty and fitness to handle sensitive information. Consent to such an investigation may be a prerequisite to the processing of an employment application.

(2) The character and fitness of criminal justice information system personnel to handle sensitive information, including personnel working with manual criminal justice file systems and terminal operators as well as personnel working with the system at a central computer, shall be reviewed by the employing agency periodically. Serious violations or deficiencies under this section are grounds for dismissal.

(3) Each criminal justice agency shall develop and maintain an in-service training program and security manual to ensure that

each employee who works with or has access to the criminal justice information system annually reviews and understands the nature and importance of the system's security provisions.

(4) With regard to automated systems, the criminal justice agency shall screen and may reject for employment and initiate or cause to be initiated administrative action relating to employees having direct access to criminal history record information as required by federal regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

Section 19. Inspection or transfer of criminal history records. (1) An individual or his agent may inspect any criminal history record information maintained about the individual or transfer copies of that information to any other person upon the presentation of satisfactory identification to the criminal justice agency maintaining the criminal history record information. Fingerprints may be required for identification. An agent must also submit a notarized authorization from his principal or an authorization order from a district court.

(2) If an individual's criminal history record information is maintained in the state repository, copies of the records shall be transferred to the local agency for inspection upon proper request of the individual or his agent. A local agency shall honor a verified affidavit accompanying a request by an individual for a transfer of copies of criminal history record information concerning that individual to a criminal justice agency of

SB 271

MICROFILMED FROM BEST AVAILABLE COPY

another state for the purpose of complying with [this act].

(3) (a) An individual may request inspection or transfer of copies, or both, of criminal history record information only during normal working hours.

(b) Copies of records may be made by or at the request of a properly identified individual or his authorized agent. If a machine for making copies is not reasonably available, the individual or his agent may make handwritten copies. A charge, not to exceed the cost of labor and materials, may be made by the agency for machine-produced copies. Each copy must be clearly marked to indicate that it is for inspection only.

(c) An agency employee should be available to answer questions concerning record content. A record of each request to inspect records under this section must be maintained.

Section 20. Challenge and correction. (1) After inspection of criminal history record information, an individual may contest the accuracy or completeness, or both, of the information about himself.

(2) If the agency maintaining the criminal history record information does not correct it to the individual's satisfaction, the individual may request review and correction by the executive head of the agency.

(3) If the requested correction is denied by the head of the agency, the individual may present a challenge to the department of justice.

SB 271

(4) If the agency in charge of the record in question can verify the accuracy of its record by communication with the originating criminal justice agency, it shall do so. If accuracy or completeness cannot be verified and the agency primarily originating the information containing the alleged error or omission is in this state, the individual shall address his challenge to that agency. If information necessary to verify the accuracy or completeness of the record cannot be obtained by the originating agency, it may rely on verified written documents or include the individual's allegation in its records in dissemination until there is a final disposition of the challenge.

(5) If the challenge is successful, the agency shall:

(a) supply to the individual, if requested, a list of those noncriminal justice agencies which have received copies of the criminal history record information about the individual; and

(b) immediately correct its records and notify all criminal justice agencies to which it has given erroneous or incomplete information of these changes.

Section 21. Dissemination of copied or inspected records. (1) Criminal justice agencies shall maintain a record of all agencies and individuals to which or whom copies of criminal history record information have been disseminated.

(2) A criminal justice agency supplying criminal history record information to an individual upon request is not responsible for the use or secondary dissemination of copied or

S. 271

MICROFILMED FROM BEST AVAILABLE COPY

inspected information and is not required to furnish updated information except upon a subsequent request by the individual.

Section 22. Sanctions. The sanctions provided in 44-2-205 apply to any knowing or purposeful violation of [this act].

Section 23. Department of justice -- powers. The department of justice may:

(1) adopt rules necessary to carry out the purposes of [this act];

(2) hear and decide contested cases or challenges that may arise under the provisions of the Montana Administrative Procedure Act;

(3) conduct audits of the criminal history record information systems of a representative sample of state and local criminal justice agencies chosen annually on a random basis to determine whether they are in compliance with the provisions of [this act]. The function authorized in this subsection may not be assigned to any subagency that has supervisory authority over any criminal justice information system.

Section 24. Court order to enforce compliance. Any person may apply for an order from a district court to enforce compliance with any provision of [this act].

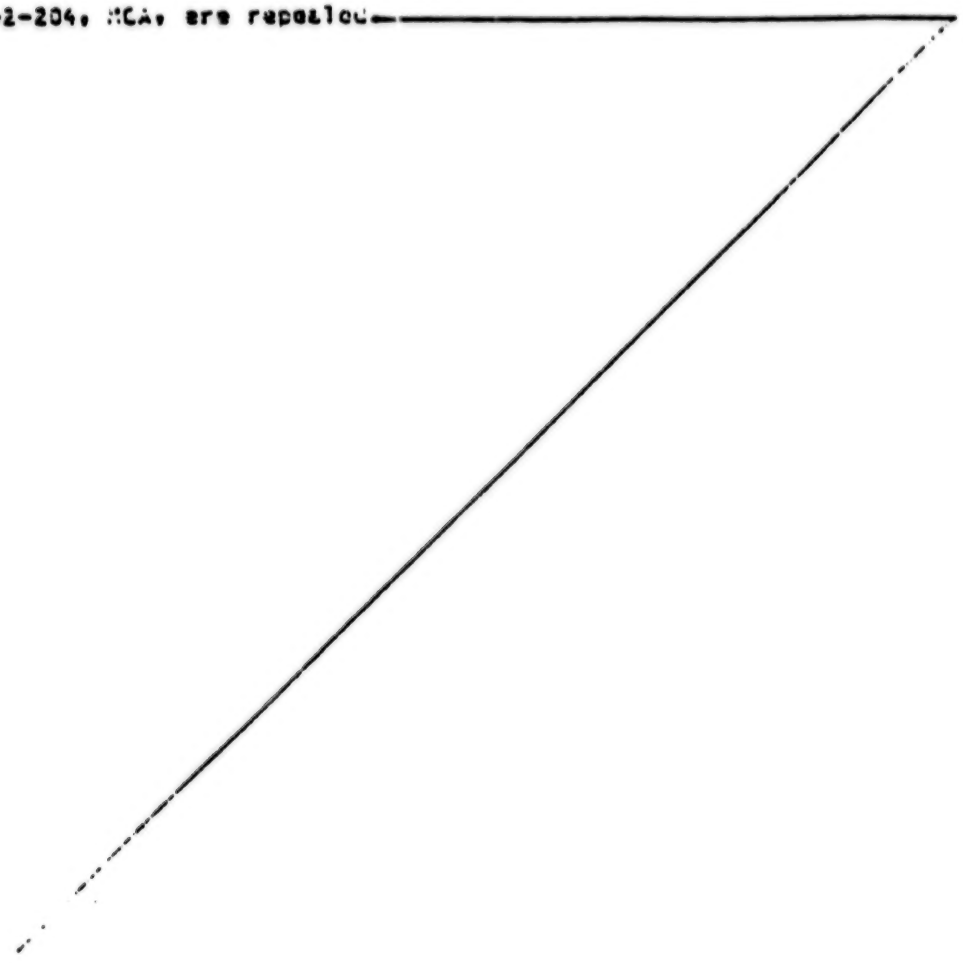
Section 25. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 26. Severability. If a part of this act is invalid,

SB 271

all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 27. Repealer. Sections 44-2-103, 44-2-203, and 44-2-204, MCA, are repealed.



SB 271

MICROFILMED FROM BEST AVAILABLE COPY

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	LB713-29		X
2. Privacy and Security	LB713-29		X
3. Dissemination Regulations	LB713 Sec. 29.3518 29.3523 Reg. 7 Reg. 3	X	X X X
4. Inspection	LB713 Sec. 29-3522 29-3525 Reg. 4	X	X X
5. Challenge	LB713 Sec. 29-3526 Reg. 7 Reg. 1	X	X X
6. Judicial Review	LB713, 29-3526 Reg. 1		X X
7. Purge: Non-Conviction			
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete	LB713 Sec. 29-3517 Reg. 1		X X
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty	LB713 Sec. 29-3528 Reg. 3		X X
18. Public Records	LB713 Sec. 29-3520 84-712	X	X
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination	Reg. 7	X	
22. Security	LB713 Sec. 29-3518 29-3519 Reg. 3		X X X
23. Transaction Logs	LB713 29-3526 Reg. 1		X X
24. Train Employees	Reg. 3		X
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

ARTICLE 35

CRIMINAL HISTORY INFORMATION

Section.

29-3501. Act, how cited.
29-3502. Act, purposes.
29-3503. Definitions; sections found.
29-3504. Administration of criminal justice, defined.
29-3505. Commission, defined.
29-3506. Criminal history record information, defined.
29-3507. Complete, defined.
29-3508. Criminal history record information system or system, defined.
29-3509. Criminal justice agency, defined.
29-3510. Direct access, defined.
29-3511. Disposition, defined.
29-3512. Operator, defined.
29-3513. Person, defined.
29-3514. Person in interest, defined.
29-3515. Criminal justice agency; criminal history record information; maintain.
29-3516. Criminal justice agency; disposition of cases; report; procedure; commission; forms; rules and regulations; adopt.
29-3517. Criminal justice agency; criminal history record information; process; assure accuracy.
29-3518. Criminal history record information; access; restrictions; requirements.
29-3519. Criminal justice information systems; computerized; access; limitations; security; conditions.
29-3520. Criminal history record information; public record; criminal justice agencies; regulations; adopt.
29-3521. Information; considered public record; classifications.
29-3522. Criminal justice agency records; application to inspect; unavailable; procedure to provide records.
29-3523. Criminal history record information; notation of an arrest; dissemination; limitations.
29-3524. Criminal justice agencies; fees; assessment.
29-3525. Criminal history record information; review by person in interest; identity; verification.
29-3526. Commission; powers and duties; rules and regulations.
29-3527. Violations; penalty.
29-3528. Officer or employee; violation of act; person aggrieved; remedies.

MICROFILMED FROM BEST
AVAILABLE COPY

29-3507. Complete, defined. With reference to criminal history record information, complete shall mean that arrest records shall show the subsequent disposition of the case as it moves through the various stages of the criminal justice system; and accurate shall mean containing no erroneous information of a material nature.

Source: Laws 1978, LB 713, § 7.
Effective date April 24, 1978.

29-3508. Criminal history record information system or system, defined. Criminal history record information system or system shall mean a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information.

Source: Laws 1978, LB 713, § 8.
Effective date April 24, 1978.

29-3509. Criminal justice agency, defined. Criminal justice agency shall mean:

(1) Courts; and

(2) A government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

Source: Laws 1978, LB 713, § 9.
Effective date April 24, 1978.

29-3510. Direct access, defined. Direct access shall mean having the custodial authority to handle and control the actual documents or automated or computerized documentary record which constitutes the criminal history data base.

Source: Laws 1978, LB 713, § 10.
Effective date April 24, 1978.

29-3511. Disposition, defined. Disposition shall mean information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, and also information disclosing the nature of the termination of the proceedings.

Source: Laws 1978, LB 713, § 11.
Effective date April 24, 1978.

29-3512. Operator, defined. Operator shall mean the agency, person, or group of persons designated by the governing body of the jurisdiction served by a criminal history record information system to coordinate and supervise the system.

Source: Laws 1978, LB 713, § 12.
Effective date April 24, 1978.

29-3513. Person, defined. Person shall mean any natural person, corporation, partnership, firm, or association.

Source: Laws 1978, LB 713, § 13.
Effective date April 24, 1978.

MICROFILMED FROM BEST AVAILABLE COPY

29-3514. Person in interest; defined. Person in interest shall mean the person who is the primary subject of a criminal justice record or any representative designated by such person, except that if the subject of the record is under legal disability, person in interest shall mean the person's parent or duly appointed legal representative.

Source: Laws 1978, LB 713, § 14.
Effective date April 24, 1978.

29-3515. Criminal justice agency; criminal history record information; maintain. Each criminal justice agency shall maintain complete and accurate criminal history record information with regard to the actions taken by the agency.

Source: Laws 1978, LB 713, § 15.
Effective date April 24, 1978.

29-3516. Criminal justice agency; disposition of cases; report; procedure; commission; forms; rules and regulations; adopt. Each criminal justice agency in this state shall report the disposition of cases which enter its area in the administration of criminal justice. As to cases in which fingerprint records must be reported to the Nebraska State Patrol under section 29-209, such disposition reports shall be made to the patrol. In all other cases when a centralized criminal history record information system is maintained by local units of government, dispositions made within the jurisdiction covered by such system shall be reported to the operator of that system or to the arresting agency in a noncentralized criminal history record information system. All dispositions shall be reported as promptly as feasible but not later than fifteen days after the happening of an event which constitutes a disposition. In order to achieve uniformity in reporting procedures, the commission shall prescribe the form to be used in reporting dispositions and may adopt rules and regulations to achieve efficiency and which will promote the ultimate purpose of insuring that each criminal justice information system maintained in this state shall contain complete and accurate criminal history information. All forms and rules and regulations relating to reports of dispositions by courts shall be approved by the Supreme Court of Nebraska.

Source: Laws 1978, LB 713, § 16.
Effective date April 24, 1978.

29-3517. Criminal justice agency; criminal history record information; process; ensure accuracy. Each criminal justice agency shall institute a process of data collection, entry, storage, and systematic audit of criminal history record information that will minimize the possibility of recording and storing inaccurate information. Any criminal justice agency which finds that it has reported inaccurate information of a material nature shall forthwith notify each criminal justice agency known to have received such information. Each criminal justice agency shall (1) maintain a listing of the individuals or agencies both in and outside of the state to which criminal history record information was released, a record of what information was released, and

the date such information was released, (2) establish a delinquent disposition monitoring system, and (3) verify all record entries.

Source Laws 1978, LB 713, § 19.
Effective date April 24, 1978.

29-3518. Criminal history record information; access; restrictions; requirements. Direct access to criminal history record information system facilities, system operating environments, data file contents, and system documentation shall be restricted to authorized organizations and persons. Wherever criminal history record information is collected, stored, or disseminated, the criminal justice agency or agencies responsible for the operation of the system: (1) May determine for legitimate security purposes which pesonnel may work in a defined area where such information is stored, collected, or disseminated; (2) shall select and supervise all personnel authorized to have direct access to such information; (3) shall assure that an individual or agency authorized direct access is administratively held responsible for (a) the physical security of criminal history record information under its control or in its custody, and (b) the protection of such information from unauthorized access, disclosure, or dissemination; (4) shall institute procedures to reasonably protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters; (5) shall provide that each employee working with or having access to criminal history record information is to be made familiar with this act and of any rules and regulations promulgated under such act; and (6) shall require that direct access to criminal history record information shall be made available only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system. This section shall not be construed to inhibit or limit dissemination of criminal history record information as authorized in other sections of this act, including both review of original records and the right to have copies made of records when not prohibited.

Source Laws 1978, LB 713, § 20.
Effective date April 24, 1978.

Note "This act" includes sections 29-209, 29-210, 29-3501 to 29-3523, and 81-1427.

29-3519. Criminal justice information systems; computerized; access; limitations; security; conditions. Whenever computerized data processing is employed, effective and technologically advanced software and hardware designs shall be instituted to prevent unauthorized access to such information. Computer operations which support criminal justice information systems shall operate in accordance with procedures approved by the participating criminal justice agencies and assure that (1) criminal history record information is stored by the computer in such a manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by noncriminal

MICROFILMED FROM BEST AVAILABLE COPY

justice terminals, (2) operation programs are used that will prohibit inquiry, record updates, or destruction of records from any terminal other than criminal justice system terminals which are so designated, (3) destruction of records is limited to designated terminals under the direct control of the criminal justice agency reponsible for creating or storing the criminal history record information, (4) operational programs are used to detect and store, for the output of designated criminal justice agency employees, all unauthorized attempts to penetrate any criminal history record information system, program, or file, (5) the programs specified in subdivisions (2) and (4) of this section are known only to criminal justice agency employees responsible for criminal history record information control, or individuals and agencies pursuant to a specific agreement with the criminal justice agency to provide such programs and that the programs are kept continuously under maximum security conditions, and (6) a criminal justice agency may audit, monitor, and inspect procedures established in this section.

Source: Laws 1978, LB 713, § 21.
Effective date April 24, 1978.

29-3520. Criminal history record information; public record; criminal justice agencies; regulations; adopt. Complete criminal history record information maintained by a criminal justice agency shall be a public record open to inspection and copying by any person during normal business hours and at such other times as may be established by the agency maintaining the record. Criminal justice agencies may adopt such regulations with regard to inspection and copying of records as are reasonably necessary for the physical protection of the records and the prevention of unnecessary interference with the discharge of the duties of the agency.

Source: Laws 1978, LB 713, § 22.
Effective date April 24, 1978.

29-3521. Information; considered public record; classifications. In addition to public records under section 29-3520, information consisting of the following classifications shall be considered public record for purposes of dissemination: (1) Posters, announcements, lists for identifying or apprehending fugitives or wanted persons, or photographs taken in conjunction with an arrest for purposes of identification of the arrested person; (2) original records of entry such as police blotters, offense reports, or incident reports maintained by criminal justice agencies; (3) court records of any judicial proceeding; and (4) records of traffic offenses maintained by the Department of Motor Vehicles for the purpose of regulating the issuance, suspension, revocation, or renewal of driver's or other operator's licenses.

Source: Laws 1978, LB 713, § 23.
Effective date April 24, 1978.

29-3522. Criminal justice agency records; application to inspect unavailable; procedure to provide records. If the requested criminal

justice history record or other public record, as defined in section 29-3521, of a criminal justice agency is not in the custody or control of the person to whom application is made, such person shall immediately notify the applicant of this fact. Such notification shall be in writing if requested by the applicant and shall state the agency, if known, which has custody or control of the record in question. If the requested criminal history record or other public record of a criminal justice agency is in the custody and control of the person to whom application is made but is not available at the time an applicant asks to examine it, the custodian shall immediately notify the applicant of such fact, in writing, if requested by the applicant. When requested by the applicant, the custodian shall set a date and hour within three working days at which time the record shall be available for inspection.

Source: Laws 1978, LB 713, § 24.
Effective date April 24, 1978.

29-3521. Criminal history record information; notation of an arrest; dissemination; limitations. That part of criminal history record information consisting of a notation of an arrest, when no disposition is shown after an interval of one year and no active prosecution is pending, shall not be disseminated to persons other than criminal justice agencies except when the subject of the record:

(1) Is currently the subject of prosecution or correctional control as the result of a separate arrest;

(2) Is currently an announced candidate for or holder of public office; or

(3) Has made a notarized request for the release of such record to a specific person.

Source: Laws 1978, LB 713, § 25.
Effective date April 24, 1978.

29-3524. Criminal justice agencies; fees; assessment. Criminal justice agencies may assess reasonable fees, not to exceed actual costs, for search, retrieval, and copying of criminal justice records and may waive fees at their discretion. When fees for certified copies or other copies, printouts, or photographs of such records are specifically prescribed by law, such specific fees shall apply.

Source: Laws 1978, LB 713, § 26.
Effective date April 24, 1978.

29-3525. Criminal history record information; review by person in interest; identity; verification. Any person in interest, who asserts that he or she has reason to believe that criminal history information relating to him or her or the person in whose interest he or she acts is maintained by any system in this state, shall be entitled to review and receive a copy of such information for the purpose of determining its accuracy and completeness by making application to the agency operating such system. The applicant shall provide satisfactory verification of the subject's identity, which shall include name, date, and place of birth, and, when identification is doubtful, a set of fingerprint

MICROFILMED FROM BEST AVAILABLE COPY

impressions may be taken upon fingerprint cards or forms commonly used for law enforcement purposes by law enforcement agencies. The review authorized by this section shall be limited to a review of criminal history record information.

Source: Laws 1978, LB 713, § 25.
Effective date April 24, 1978.

29-3526. Commission; powers and duties; rules and regulations. The commission may by rule authorize a fee for each application for review under section 29-3525, and may charge for making copies or printouts as provided in section 29-3524. The commission shall implement section 29-3525 by rule and regulation, including but not limited to provisions for (1) administrative review and necessary correction of any claim by the individual to whom the information relates that the information is inaccurate or incomplete, (2) administrative appeal when a criminal justice agency refuses to correct challenged information to the satisfaction of the individual to whom the information relates, (3) supplying to an individual whose record has been corrected, upon his or her request, the names of all noncriminal justice agencies and individuals to which the data has been given, and (4) requiring the correcting agency to notify all criminal justice recipients of corrected information.

Source: Laws 1978, LB 713, § 26.
Effective date April 24, 1978.

29-3527. Violations; penalty. Any person who (1) permits unauthorized direct access to criminal history record information, (2) knowingly fails to disseminate or make public criminal history record information of official acts as required under this act, or (3) knowingly disseminates nondisclosable criminal history record information in violation of this act, shall be guilty of a Class IV misdemeanor.

Source: Laws 1978, LB 713, § 30.
Effective date April 24, 1978.

Note: "This act" includes sections 29-209, 29-210, 29-3501 to 29-3523, and 81-1423.

29-3528. Officer or employee; violation of act; person aggrieved; remedies. Whenever any officer or employee of the state, its agencies, or its political subdivisions, or whenever any state agency or any political subdivision or its agencies fails to comply with the requirements of this act or of regulations lawfully adopted to implement this act, any person aggrieved may bring an action, including but not limited to an action for mandamus, to compel compliance and such action may be brought in the district court of any district in which the records involved are located or in the district court of Lancaster County. The commission may request the Attorney General to bring such action.

Source: Laws 1978, LB 713, § 31.
Effective date April 24, 1978.

Note: "This act" includes sections 29-209, 29-210, 29-3501 to 29-3523, and 81-1423.

Nebraska Commission on Law Enforcement and Criminal Justice

RULE AND REGULATION
NO. 1 July 28, 1978

PROCEDURES FOR CHALLENGE AND CORRECTION OF CRIMINAL HISTORY RECORD INFORMATION

PURPOSE: To provide procedures for challenge of the completeness or accuracy of criminal history record information and to provide procedures for correction of such records when found to be incomplete or inaccurate.

1. SCOPE: Applicable to all criminal justice agencies in the State of Nebraska.

2. AUTHORITY: This regulation is adopted in accordance with the provisions of Article 9, Chapter 81, R.R.S. 1943 as amended to date, and pursuant to the authority contained in Section 81-1423 (1), (5), (8), (9), and (14), R.R.S. 1943, as amended by Laws 1978, LB 713, Section 29.

   These rules are intended and designed to meet the requirements of Title 28 of the Code of Federal Regulations, Chapter 1, Part 20 as amended December 6, 1977.

3. EFFECTIVE DATE: This regulation shall become effective August 1, 1978.

4. RECORD REVIEW: Any person in interest who asserts that he or she has reason to believe that criminal history information relating to him or her, or another person in whose interest he or she acts, is maintained by any system in the state, shall be entitled to review and receive a copy of such information for the purpose of determining its accuracy and completeness by making application to the agency operating such system. The applicant shall provide satisfactory verification of the subject's identity, which shall include name, date and place of birth. When identification is doubtful, a set of fingerprint impressions may be taken by the law enforcement agency. The review authorized by this rule and regulation is limited to criminal history record information.

5. PROCEDURE: When any person in interest, upon review of criminal history information finds what he or she believes to be inaccurate or incomplete information as defined by this regulation, he or she shall within three days notify the agency maintaining the criminal history information in writing that he or she believes the records to be incomplete or inaccurate.

MICROFILMED FROM BEST AVAILABLE COPY

Notification must include a specific description of the record entries believed to be inaccurate or incomplete and a description of what the record should accurately contain. Any criminal justice agency receiving notification shall respond to the applicant within five working days. Response by the agency shall include either an indication that correction procedures have been initiated or shall include intent to maintain the record as it exists. Copies of all correspondence regarding correction or refusal to correct shall be retained by the criminal justice agency.

If the applicant is notified by the criminal justice agency that the record will not be corrected, he or she may seek administrative review by the Nebraska Commission on Law Enforcement and Criminal Justice. Application for administrative review shall include the following:

a. Full name, place and date of birth of subject of criminal history record.

b. Copy of criminal history record in dispute.

c. Description of what record should contain.

d. Copies of correspondence between applicant and agency holding disputed information.

Upon receipt of a full application, Commission staff shall, within three working days, notify both the person in interest and the agency holding the record that an application has been received and that an administrative review will be started. The Commission staff will review records and conduct interviews as may be necessary to reach a conclusion of whether the disputed record is inaccurate or incomplete. Commission staff will, within 30 days, report the findings of the administrative review to the Data Processing Committee of the Commission. Commission staff shall notify the applicant and the agency holding the record information of the time and place of the Data Processing Committee meeting in which the report will be presented. The Data Processing Committee will review the staff report and conclusions and make a finding at that time.

If it is the finding of the Data Processing Committee that information in the criminal history record is inaccurate or incomplete, the Commission staff will notify both the applicant and the agency holding the record and will direct the agency to begin correction procedures.

If either the applicant or the agency holding the record desire to contest the decision of the Data Processing Committee, they shall within ten days notify the Commission in writing of their intent to do so. The appeal shall be considered a contested case as defined by Section 84-901, R.R.S., 1943. A hearing before the Commission Data Processing Committee shall be scheduled within 30 days and shall be conducted in a manner consistent with Sections 84-913 through 84-916, R.R.S., 1943.

6. HEARING PROCEDURES: Upon acceptance by the Commission of a contested case, as defined in Section 84-901 (3) Reissued Revised Statutes of Nebraska, the following procedures shall be used for hearing:

   a. NOTICE: All parties involved in contested cases shall be notified not less than 20 working days prior to the hearing.

   b. REQUEST FOR HEARING/FILING PROCEDURES: The person requesting the hearing shall make the request in writing. The request shall be accompanied with the following documentation.

      (1) Full name, place of birth and date of birth of subject of criminal history record.

      (2) Copy of criminal history record in dispute.

      (3) Description of disputed point in record and description of what record should contain.

      (4) Copies of correspondence between agency holding disputed information and applicant.

      (5) Listing and description of any supplementary information or evidence to be considered in the hearing.

   c. CONTINUANCES: Any person desiring a continuance shall, immediately upon receipt of notice of hearing or as soon thereafter as facts requiring such continuance come to his knowledge, notify the Director of the Nebraska Commission on Law Enforcement and Criminal Justice by letter or telegram as so desired, stating in detail the reasons why such continuance is necessary. For good cause, the Director may grant such a continuance and may at any time order a continuance on his own motion. Request for continuances, unless justified by exceptional circumstances, must be submitted seven days prior to the hearing date.

   d. CONDUCT OF HEARING: The hearing will be conducted by the Chairman of the Commission's Data Processing Committee or by hearing officer as the Chairman may designate. The Chairman or hearing officer will open proceedings, rule on motions and objections relating to testimony and evidence, interrogate any witness to ascertain additional facts, and close the proceedings. All parties may make opening and closing statements, if they so desire.

   e. TRANSCRIPTS: At the discretion of the Chairman, hearings may be recorded by a court reporter, recorded by tape recorder or by secretary in shorthand. Any person involved in the proceedings may request and obtain an official record of the proceedings, provided the request is in writing and delivered to the Director of the Commission at least five days prior to the date of hearing. Charge for preparing an official record will be paid by the party requesting it.

MICROFILMED FROM BEST AVAILABLE COPY

f. FINDINGS: Upon completion of the hearing, the Data Processing Committee shall take the matter under advisement and shall subsequently make findings and enter an order in accordance with Section 84-915 R.R.S. 1943.

g. APPEAL: Except as otherwise provided by law, any person may appeal the order given by the Data Processing Committee to the District Court in accordance with the provisions of Section 84-917 R.R.S. 1943, as amended.

h. EVIDENCE: The chairman or hearing officer shall receive into record all evidence in accordance with the criteria in Section 84-914 R.R.S. 1943.

7. CORRECTION PROCEDURES: Upon a finding by the Commission that a record is incomplete or inaccurate, the criminal justice agency holding the record shall within 15 working days notify all criminal justice agencies which are known by the agency to be recipients of the incorrect record. The agency shall submit to the Commission in writing either a list of agencies notified of the correction or a certification by the chief executive officer of the agency that the record had not been disseminated to any other criminal justice agencies. The criminal justice agency shall also, within 15 working days, supply to the applicant upon his or her request, the names of all non-criminal justice agencies or individuals to which the record has been given.

8. DEFINITIONS: As used in this regulation:

a. "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions or notations of issuance of arrest warrants, arrests, detentions, indictments, charges by information, and other formal criminal charges and any disposition arising from such arrest, charges, sentencing, correctional supervision and release. Criminal history record information does not include intelligence or investigative information.

b. "Person in interest" means the person who is the primary subject of a criminal justice record or any representative designated by such person, except that if the subject of the record is under legal disability, person in interest shall mean the person's parent or duly appointed legal representative.

c. "Errors of a material nature" means errors that distort information detailing date, time, location, or nature of any criminal justice proceedings which are documented in the record.

d. "Complete and accurate" means that arrest records show the subsequent disposition of the case as it moves through the various stages of the criminal justice system. Accurate shall mean containing no erroneous information of a material nature.

HARRIS R. OWENS
Executive Director

OPR: Director of Planning
DISTRIBUTION: Staff, Commission Members, Regions, Training Center, all criminal justice agencies in Nebraska
SUPERSEDES R&R #3, Rule and Regulation Governing Access by Individuals To Their Criminal Records, July 29, 1977.

MICROFILMED FROM BEST AVAILABLE COPY

Nebraska Commission on Law Enforcement and Criminal Justice

RULE AND REGULATION
NO. 2

January 26, 1979

RULE AND REGULATION TO PRESCRIBE FORMS FOR DISPOSITION REPORTING AND TO ESTABLISH A DISPOSITION REPORTING SYSTEM

PURPOSE: To prescribe forms to be used for reporting dispositions of criminal cases and to establish an efficient system of reporting dispositions to ensure criminal history information maintained in Nebraska is complete and accurate.

(1) SCOPE: This regulation shall apply to all criminal justice agencies in the State of Nebraska as defined by Laws 1978, LB 713.

(2) AUTHORITY: This regulation is adopted in accordance with the provisions of Article 9, Chapter 84, R.R.S., 1943, as amended to date, and pursuant to the authority contained in Section 81-1423 (1), (5), (8), (9), and (14), R.R.S., 1943, as amended by Laws 1978, LB 713, sec. 18.

These rules are intended and designed to meet the requirements of Laws 1978, LB 713 and of Title 28 of the Code of Federal Regulations, Chapter 1, Part 20, as amended December 6, 1977.

(3) EFFECTIVE DATE: This regulation shall become effective April 1, 1979.

(4) PRESCRIPTION OF FORMS: All arresting agencies will use Form 1. All forms, except Form 1, apply only to those agencies which do not possess the capacity for electronic reporting. Those agencies which do possess the capacity for electronic reporting are encouraged to do so, and will adhere to a data format which shall be mutually developed by the technical staffs of the agencies involved and offered as addenda to this regulation.

(a) Form 1: Arrest card (card stock, bottom section) shall be used by all law enforcement agencies. This form is the fingerprint card supplied by the Nebraska State Patrol as referenced by Section 29-209 R.R.S. 1943 and amended by LB 713 (1978).

Form 2: Arrest card (multi copy, top section) shall be used by all law enforcement agencies. It shall also be used by all prosecutorial agencies in the State of Nebraska when any arrested individual is referred to the prosecutorial agency.

Form 3: Preliminary Disposition Form shall be used by all courts which hold preliminary hearing jurisdiction in felony matters.

Form 4: Final Disposition Form shall be used by all courts which have felony jurisdiction.

Form 5: Appeal/Modification Form shall be used by all courts which have felony jurisdiction or courts having appellate jurisdiction in felony matters.

Form 6: Incarceration Disposition Form 1 shall be used by all administering authorities for jail facilities.

(b) Forms described in this section are recommendations onl and need not be followed if satisfactory reporting arrangements ve been worked out among the local agencies involved.

Form L1: Prosecution Disposition Forms may be used by all prosecutorial agencies in the State of Nebraska.

Form L2: Misdemeanor Disposition Form may be used by all courts having misdemeanor jurisdiction (same form as Form 3, above).

Form L3: Appeal/Modification Form may be used by all courts having misdemeanor jurisdiction or courts having appellate jurisdiction in misdemeanor matters.

Form L4: Incarceration Disposition Form 2 may be used by the administration of all local incarceration facilities.

(5) OFFENSES SPECIFIED:

(a) Forms prescribed in paragraph (4)(a) above shall be used for reporting of proceedings in criminal offenses for which there is a felony arrest under Nebraska statutes, arrests of persons identified as felony fugitives of other jurisdictions, and persons arrested for any reason against whom felony charges are filed.

(b) Forms prescribed in paragraph (4)(b) may be used for all other criminal arrests made in the State of Nebraska.

(6) PROCEDURE:

(a) For all arrests made in the State of Nebraska as specified in (5)(a) above:

MICROFILMED FROM BEST AVAILABLE COPY

i. The arresting agency will send one copy of FBI fingerprint card and Form 1 to the Nebraska State Patrol.

EXCEPTION:

Form 1 and FBI fingerprint card shall not be sent to the State Patrol for any child less than 18 years old unless: (1) the child has been convicted of a felony; (2) the child has unlawfully terminated his or her commitment to a Youth Development Center; or (3) the child is a runaway, and a fingerprint check is needed for identification purposes to return the child to his or her parents.

When a person for whom a warrant has been issued for any offense surrenders him or herself to a prosecutor, the prosecutor shall promptly arrange to have the person formally booked by the appropriate law enforcement agency. If a person has not been formally booked for a nonfelony arrest and felony charges are subsequently filed, the prosecutor shall promptly arrange formal booking.

When the arrested person is not held for prosecution, that action shall be entered in the Final Disposition area of Form 1 and sent to the Nebraska State Patrol.

ii. The arresting agency will retain the card stock of Form 2 and will forward all paper copies to the prosecutor unless final disposition of all matters is had in the arresting agency.

iii. The prosecuting agency will denote its action on Form 2. If no charges are filed, a copy of Form 2 shall be filed with the Clerk of the County Court, who will forward same to the Office of the State Court Administrator. The State Court Administrator shall forward same to the Nebraska State Patrol. If charges are filed, a copy of Form 2 shall be filed with the Clerk of the Court assuming jurisdiction. In either case, a copy of Form 2 shall be returned to the arresting agency.

iv. If any charges are filed, the court assuming jurisdiction shall send one copy of Form 3 to the Office of the State Court Administrator.

v. Upon the departure of the case(s) from the jurisdiction of the court, such court shall send a second copy of Form 3 to the Office of the State Court Administrator and return a copy to the arresting agency

and;

In the case of a felony bind over fill in identification information on Form 4 and submit that along with a copy of Form 3 to the district court

or;

In the case of a misdemeanor conviction submit a copy of Form 3 to the agency assuming jurisdiction if any.

vi. Upon formal filing in the district court, that court will complete the filing information on Form 4 and send one copy of Form 4 to the Office of the State Court Administrator.

vii. Upon disposition of each case in district court the remainder of Form 4 will be filled out and copies sent to the Office of the State Court Administrator and the arresting agency

and;

A copy of Form 4 will be transmitted to the agency, if any, assuming jurisdiction over the individual.

viii. If after a felony bind over the prosecutor, in his discretion, declines to pursue prosecution, the prosecutor's action and date of action shall be recorded on the prosecutor's copy of Form 2. Photostatic copies of Form 2 shall be made and distributed to: (a) The original arresting agency; (b) The Clerk of the County Court (who shall send same to the Office of the State Court Administrator). The State Court Administrator shall forward same to the Nebraska State Patrol.

ix. Form 6 will be submitted to and through the Department of Correctional Services.

x. Upon change of probation status (completion, revocation, etc.), a copy of Form 4 showing the nature and date of such change shall be sent by the Field Probation Officer to the State Probation Administrator. He shall forward same to the Nebraska State Patrol.

xi. Post-conviction modifications within the State Court System shall be reported on Form 5 by the modifying court and shall, within 15 days, be sent to the State Court Administrator and the arresting agency.

xii. If the defendant in any felony action pursues relief in the federal courts, it shall be the obligation of the State Attorney General to report to the Nebraska State Patrol and arresting agency on Form 5 only if such action results in the alteration of any conviction or sentence previously reported.

MICROFILMED FROM BEST AVAILABLE COPY

xiii. If the modification is an order for a new trial, and a new trial is not held, the prosecutor's action and date of action shall be recorded on the prosecutor's copy of Form 2. Photostatic copies of Form 2 shall be made and distributed to: (a) The original arresting agency; (b) The Clerk of the County Court (who shall send same to the Office of the State Court Administrator). The State Court Administrator shall forward same to the Nebraska State Patrol.

(b) For all arrests made in the State of Nebraska as specified in (3)(b), above:

i. A record shall be kept of the arrest by the arresting agency or by the operator of the local criminal history record information system in which the agency participates.

ii. When the arresting agency does not refer the case to a prosecutor, the agency shall, within 15 days, enter that action and the nature of the action on the arrest record as a disposition.

iii. When the prosecuting agency declines to file charges or choses to divert the person arrested, the agency shall, within 15 days, notify the arresting agency or the operator of the local CHRI system of the action and the nature of the action.

iv. The court making final disposition of the case shall, within 15 days, notify the arresting agency or the operator of the local CHRI of that disposition. Form 3 may be used for this purpose.

v. Any court making modification to any previously recorded disposition shall, within 15 days, notify the arresting agency or the operator of the local CHRI system of that modification. Form 5 may be used for this purpose.

vi. The administering agency for a local incarceration facility shall, within 15 days, notify the arresting agency or the operator of the local CHRI of any disposition of that incarceration.

vii. The State Probation Administrator shall, within 15 days, notify the arresting agency or the operator of the local CHRI of any disposition of any probationer which comes under the jurisdiction of the State Probation Department.

HARRIS R. OWENS
Executive Director

OPR: Director of Planning
DISTRIBUTION: Staff, Commission Members, Regions, Training Center, all criminal justice agencies in Nebraska

MICROFILMED FROM BEST AVAILABLE COPY

Nebraska Commission on Law Enforcement and Criminal Justice

RULE AND REGULATION NO. 3

January 26, 1979

PROCEDURES FOR STORAGE AND DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION

PURPOSE: To insure that each criminal justice information system maintained in Nebraska shall contain complete and accurate criminal history information and to assure implementation of dissemination guidelines established by Legislative Bill 713, 1978.

(1) SCOPE: This regulation shall apply to all criminal justice agencies in the State of Nebraska as defined by Laws 1978, LB 713.

(2) AUTHORITY: This regulation is adopted in accordance with the provisions of Article 9, Chapter 84, R.R.S. 1943, as amended to date, and pursuant to the authority contained in Section 81-1423(1), (5), (8), (9) and (14), R.R.S. 1943, as amended by Laws 1978, LB 713, Section 18.

These rules are intended and designed to meet the requirements of Laws 1978, LB 713 and of Title 28 of the Code of Federal Regulations, Chapter 1, Part 20, as amended December 6, 1977.

(3) EFFECTIVE DATE: This regulation shall become effective April 1, 1979.

(4) PUBLIC RECORDS: For purposes of dissemination the following are public records:

(a) Complete criminal history record information;

(b) Posters, announcements, lists for identifying or apprehending fugitives or wanted persons, photographs taken in conjunction with an arrest for purposes of identification of an arrested person;

(c) Original records of entry such as police blotters, offense reports, or incident reports;

(d) Court records of any judicial proceeding;

(e) Records of traffic offenses maintained by the Department of Motor Vehicles for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or the operators' licenses.

(5) DISSEMINATION PROCEDURES:

(a) All criminal justice agencies shall, upon dissemination of criminal history record information:

i. Maintain a listing of individuals or agencies in and out of the state to whom criminal history record information was released.

ii. Retain description of information released.

iii. Record the date of release.

Criminal justice agencies shall also establish procedures to monitor delinquent disposition reporting and verify all record entries of criminal history record information.

Criminal history information may be disseminated without recording i., ii., and iii. above if the information is directly related to the offense or offenses for which a person is currently involved in the criminal justice system.

Routine transfer among users of a stored computerized information system, of computerized stored and generated criminal data is exempt from i., ii., and iii., above where on-line updating and retrieval are present.

Criminal justice agencies shall assure that complete criminal history record information is open to inspection and copying by any person during normal business hours and at such other times that may be established by the agency maintaining the record. Criminal justice agencies may adopt such regulations with regard to inspection and copying of records as are reasonably necessary for the physical protection of the records and the prevention of unnecessary interference with the discharge of the duties of the agency.

If the criminal history information requested is not in the custody or the control of the person to whom the application is made, that person shall immediately notify the applicant of this fact. Notification shall be writing, if requested by the applicant and shall state the agency, if known, which has custody or control of the record in question. If the requested criminal history information or other public record, as defined by this regulation, is in the custody and control of the person to whom the application is made but is not available at the time the applicant asks to examine it, the applicant shall be immediately notified (in writing, if requested by the applicant) and a date and hour within three working days shall be set for inspection of the record.

MICROFILMED FROM BEST AVAILABLE COPY

Criminal justice agencies may assess reasonable fees, not to exceed actual costs, for search, retrieval, and copying of criminal justice records and may waive fees at their discretion. When fees for certified copies or other copies, printouts, or photographs of such records are specifically prescribed by law, such specific fees shall apply.

Criminal history record information, as used in this regulation, shall not include intelligence or investigative information.

(b) Criminal history record information consisting of a notation of an arrest, without subsequent disposition after an interval of one year and no active prosecution is pending, shall not be disseminated to persons other than criminal justice agencies except when the subject of the record:

i. Is currently the subject of prosecution or correctional control as a result of a separate arrest;

ii. Is currently an announced candidate for or holder of public office; or

iii. Has made a notarized request for the release of such record to a specific person.

Criminal justice agencies releasing information defined in this paragraph shall maintain a record of the information released, the person or agency to whom it was released to, the date of release, and a description of the circumstances fitting the above exemptions.

(c) Information regarding cases in which the original arrest was made by a federal officer may only be disseminated as follows:

i. Criminal justice agencies for criminal justice purposes.

ii. Federal agencies authorized to receive it pursuant to Federal Statute or Executive order.

iii. For use in connection with licensing or local/state employment or for other uses only if such dissemination is authorized by federal or state statutes and approved by the U.S. Attorney General. When no active prosecution of the charge is known to be pending arrest data more than one year old will not be disseminated unless accompanied by information relating to the disposition of that arrest.

iv. For issuance of press releases and publicity designed to effect the apprehension of wanted persons in connection with serious or significant offenses.

(28 CFR Part 20.33)

Criminal History Record Information which has been obtained from a jurisdiction outside of the State of Nebraska must be disseminated according to the laws and/or regulations of the State from which the record was obtained.

Dissemination means transmission of criminal history record information to individuals and agencies other than criminal justice agencies that are jointly maintaining a central repository, where the information is to be used for administration of criminal justice. The reporting of a criminal justice transaction to a State, local, or Federal repository or comparison of records for purposes of verification between reporting agencies and repositories, shall not be considered a dissemination of information.

(6) SECURITY: Direct access to criminal history record information system facilities, system operating environments, data file contents, and system documentation shall be restricted to authorized organizations and persons.

(a) Wherever criminal record information is collected, stored, or disseminated, the criminal justice agency or agencies responsible for the operation of the system:

i. May determine for legitimate security purposes which personnel may work in a confined area where such information is stored, collected or disseminated;

ii. Shall select and supervise all personnel authorized to have direct access to such information;

iii. Shall ensure that an individual or agency authorized direct access is administratively held responsible for:

A. The physical security of criminal history record information under its control or in its custody;

B. The protection of such information from unauthorized access, disclosure or dissemination;

iv. Shall institute procedures to reasonably protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or any natural or man-made disasters;

v. Shall provide that each employee working with or having access to criminal history record information is made familiar with the security, privacy and dissemination of criminal history information act (Laws 1978, LB 713) and Rules and Regulations adopted in accordance with the Act by the Nebraska Commission on Law Enforcement and Criminal Justice.

MICROFILMED FROM BEST AVAILABLE COPY

vi. Require that direct access to criminal history record information is made available to only authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system. This section of this regulation shall not be construed to inhibit or limit dissemination of criminal history record information as authorized in other sections of this regulation.

(b) Criminal justice agencies using computerized record keeping facilities shall assure the following:

i. Criminal history record information is to be stored by the computer in such a manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by non-criminal justice terminals;

ii. Operation programs are used that will prohibit inquiry, record updates, or destruction of records from any such terminal other than criminal justice system terminals which are so designated;

iii. Destruction of records is limited to designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information;

iv. Operational programs are used to detect and store, for the output of the designated criminal justice agency employees, all unauthorized attempts to penetrate any criminal history record information system, program, or file; and

v. That security programs specified in this paragraph are known only to criminal justice agency employees responsible for criminal history record information control, or individuals and agencies pursuant to a specific agreement with the criminal justice agency to provide such programs and that the programs are kept continuously under maximum security conditions.

(7) UNAUTHORIZED ACCESS OR DISSEMINATION: Any person who:

(a) Permits unauthorized direct access to criminal history record information, or

(b) Knowingly fails to disseminate or make public criminal history record information as required by Laws 1978, LB 713, or

(c) Knowingly disseminates non-disclosable criminal history record information in violation of the before mentioned Act, shall be guilty of a Class IV misdemeanor.

(8) COMPLIANCE: Whenever any officer or criminal justice agency in the state fails to comply with the requirements of this regulation, Laws 1978, LB

713, or any other regulations adopted by the Nebraska Commission on Law Enforcement and Criminal Justice pursuant to the Act, any person aggrieved may bring an action, including but not limited to an action for mandamus, to compel compliance. Such action may be brought in the District Court of any district in which the records are located or in the District Court of Lancaster County. The Commission may request the Attorney General to bring such action.

HARRIS R. OWENS
Executive Director

OPR: Director of Planning
DISTRIBUTION: Staff, Commission Members, Regions, Training Center, all criminal justice agencies in Nebraska

MICROFILMED FROM BEST AVAILABLE COPY

29-3501. Act, how cited. This act shall be known and may be cited as the Security, Privacy, and Dissemination of Criminal History Information Act.

Source: Laws 1978, LB 713, § 1.
Effective date April 24, 1978.

Note: "This act" includes sections 29-209, 29-210, 29-3501 to 29-3522, and 81-1423.

29-3502. Act, purposes. The purposes of this act are (1) to control and coordinate criminal offender record-keeping within this state, (2) to establish more efficient and uniform systems of criminal offender record-keeping, (3) to assure periodic audits of such record-keeping in order to determine compliance with this act, (4) to establish a more effective administrative structure for the protection of individual privacy in connection with such record-keeping, and (5) to preserve the principle of the public's right to know of the official actions of criminal justice agencies.

Source: Laws 1978, LB 713, § 2.
Effective date April 24, 1978.

Note: "This act" includes sections 29-209, 29-210, 29-3501 to 29-3522, and 81-1423.

29-3503. Definitions; sections found. For the purpqses of this act, unless the context otherwise requires, the definitions found in sections 29-3504 to 29-3514 shall be used.

Source: Laws 1978, LB 713, § 3.
Effective date April 24, 1978.

Note: "This act" includes sections 29-209, 29-210, 29-3501 to 29-3522, and 81-1423.

29-3504. Administration of criminal justice, defined. Administration of criminal justice shall mean performance of any of the following activities: Detection, apprehension, detention, pretrial release, pretrial diversion, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.

Source: Laws 1978, LB 713, § 4.
Effective date April 24, 1978.

29-3505. Commission, defined. Commission shall mean the Nebraska Commission on Law Enforcement and Criminal Justice.

Source: Laws 1978, LB 713, § 5.
Effective date April 24, 1978.

29-3506. Criminal history record information, defined. Criminal history record information shall mean information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of issuance of arrest warrants, arrests, detentions, indictments, charges by information, and other formal criminal charges, and any disposition arising from such arrests, charges, sentencing, correctional supervision, and release. Criminal history record information shall not include intelligence or investigative information.

Source: Laws 1978, LB 713, § 6.
Effective date April 24, 1978.

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	AB524-16 216.185	X	X
2. Privacy and Security			
3. Dissemination Regulations	AB524-9 to 14		X
4. Inspection	AB524-15 179.295	X	X
5. Challenge	AB524-15		X
6. Judicial Review			
7. Purge: Non-Conviction			
8. Purge: Conviction	AB524-13		X
9. Seal: Non-Conviction	179.255 179.275	X X	
10. Seal: Conviction	179.245 179.275 453.336	X X X	
11. Remove Disqualification			
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete	216.235 216.290	X X	
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty	AB524-18		X
18. Public Records	293.010 293.030	X X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security	AB524-16		X
23. Transaction Logs			
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

Assembly Bill No. 524—Committee on Judiciary

CHAPTER.....

AN ACT relating to crimes and punishments; providing procedures for maintaining and disseminating certain criminal records and for challenging their accuracy; providing penalties; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Title 14 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 18, inclusive, of this act.

SEC. 1.5. This chapter may be cited as the Nevada Criminal History Records Act.

SEC. 2. As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this act have the meanings ascribed to them in those sections.

SEC. 3. "Administration of criminal justice" means detection, apprehension, detention, release pending trial or after trial, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders, and includes criminal identification activities and the collection, storage and dissemination of records of criminal history.

SEC. 4. "Agency of criminal justice" means:

1. Any court; and

2. Any governmental agency which performs a function in the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its budget to a function in the administration of criminal justice.

SEC. 5. "Commission" means the commission on crimes, delinquency and corrections.

SEC. 6. "Disposition" means the formal conclusion of a criminal proceeding at any point in the administration of criminal justice which shows the nature of the conclusion.

SEC. 7. "Dissemination" means disclosing records of criminal history or the absence of records of criminal history to a person or agency outside the organization which has control of the information, except:

1. Disclosure of records of criminal history among agencies which maintain a system for the mutual exchange of criminal records.

2. Furnishing of information by one agency to another for the purpose of administering the system of criminal justice, including the furnishing of information by a police department to a district attorney.

3. Reporting an event to a repository of Nevada records of criminal history.

SEC. 8. 1. "Record of criminal history" means information contained in records collected and maintained by agencies of criminal justice, the subject of which is a natural person, consisting of descriptions which identify the subject and notations of arrests, detention, indictments, informations or other formal criminal charges and dispositions of charges, including dismissals, acquittals, convictions, sentences, correctional supervision and release, occurring in Nevada. The term includes

only information contained in memoranda of formal transactions between a person and an agency of criminal justice in this state. The term is intended to be equivalent to the phrase "criminal history record information" as used in federal regulations.

2. "Record of criminal history" does not include:

(a) Investigative or intelligence information, reports of crime or other information concerning specific persons collected in the course of the enforcement of criminal laws.

(b) Information concerning juveniles.

(c) Posters, announcements or lists intended to identify fugitives or wanted persons and aid in their apprehension.

(d) Original records of entry maintained by agencies of criminal justice if the records are chronological and not cross-indexed in any other way.

(e) Records of application for and issuance, suspension, revocation or renewal of occupational licenses, including permits to work in the gaming industry.

(f) Court indices and records of public judicial proceedings, court decisions and opinions, and information disclosed during public judicial proceedings.

(g) Records of traffic violations constituting misdemeanors.

(h) Records of traffic offenses maintained by the department of motor vehicles for the purpose of regulating the issuance, suspension, revocation or renewal of drivers' or other operators' licenses.

(i) Announcements of actions by the state board of pardons commissioners and the state board of parole commissioners.

(j) Records which originated in an agency other than an agency of criminal justice in this state.

SEC. 9. No agency of criminal justice in Nevada which has a cooperative agreement with a repository of Nevada records of criminal history may disseminate any record of criminal history which includes information about a felony or a gross misdemeanor without first making inquiry of the repository of Nevada records of criminal history, to obtain the most current and complete information available, unless:

1. The information is needed for a purpose in the administration of criminal justice for which time is essential, and the repository of Nevada records of criminal history is not able to respond within the required time;

2. The full information requested and to be disseminated relates to specific facts or incidents which are within the direct knowledge of an officer, agent or employee of the agency which disseminates the information;

3. The full information requested and to be disseminated was received as part of a summary of records of criminal history from the Nevada records of criminal history information repository within 30 days before the information is disseminated;

4. The statute, executive order, court rule or court order under which the information is to be disseminated refers only to information which is in the files of the agency which makes the dissemination; or

5. The information requested and to be disseminated is for the express purpose of research, evaluation or statistical activities to be

based upon information maintained in the files of the agency or agencies from which the information is sought.

SEC. 10. 1. Records of criminal history which reflect conviction records only may be disseminated by an agency of criminal justice without any restriction pursuant to this chapter.

2. A record of criminal history which pertains to an incident for which a person is currently within the system of criminal justice, including parole or probation, may be disseminated by an agency of criminal justice without any restriction pursuant to this chapter.

3. An agency of criminal justice must disseminate to a prospective employer, upon request, records of criminal history concerning a prospective employee which:

(a) Reflect convictions only; or

(b) Pertain to an incident for which the prospective employee is currently within the system of criminal justice, including parole or probation.

4. Records of criminal history must be disseminated by an agency of criminal justice upon request, to the following persons or governmental entities for the following purposes:

(a) The person who is the subject of the record of criminal history for the purposes of section 15 of this act.

(b) The person who is the subject of the record of criminal history or his attorney of record when the subject is a party in a judicial, administrative, licensing, disciplinary or other proceeding to which the information is relevant.

(c) The gaming control board.

(d) Any agency of criminal justice of the United States or of another state or the District of Columbia.

(e) Any public utility subject to the jurisdiction of the public service commission of Nevada when the information is necessary to conduct a security investigation of an employee or prospective employee, or to protect the public health, safety or welfare.

(f) Persons and agencies authorized by statute, ordinance, executive order, court rule, court decision or court order as construed by appropriate state or local officials or agencies.

(g) Any person or governmental entity which has entered into a contract to provide services to an agency of criminal justice relating to the administration of criminal justice, if authorized by the contract, and if the contract also specifies that the information will be used only for stated purposes and that it will be otherwise confidential in accordance with state and federal law and regulation.

(h) Any reporter for the electronic or printed media in his professional capacity for communication to the public.

(i) Prospective employers if the person who is the subject of the information has given written consent to the agency which maintains the information.

(j) For the express purpose of research, evaluative or statistical programs pursuant to an agreement with an agency of criminal justice.

5. Agencies of criminal justice in this state which receive information from sources outside the state concerning transactions involving criminal justice which occur outside Nevada shall treat the information

2. Disclosure of investigative information pursuant to this section does not establish a duty to disclose any additional information concerning the same incident or make any disclosure of information obtained by an investigation, except as compelled by legal process.

SEC. 15. 1. Each state, municipal, county or metropolitan police agency shall permit a person, who is or believes he may be the subject of a record of criminal history maintained by that agency, to appear in person during normal business hours of the agency and inspect any recorded information held by that agency pertaining to him. This right of access does not extend to data contained in intelligence, investigative or other related files, and does not include any information other than that defined as a record of criminal history.

2. Each agency shall adopt regulations and make available necessary forms to permit inspection and review of Nevada records of criminal history by those persons who are the subjects thereof. The regulations must specify:

(a) The reasonable periods of time during which the records are available for inspection;

(b) The requirements for proper identification of the persons seeking access to the records; and

(c) The reasonable charges or fees, if any, for inspecting records.

3. All law enforcement agencies which maintain communications with the repository of Nevada records of criminal history shall procure for and furnish to any person who requests it, and pays a reasonable fee therefor, all of the information contained in its records of criminal history which pertains to the person making the request.

4. The commission shall adopt regulations governing:

(a) All challenges to the accuracy or sufficiency of records of criminal history by the person who is the subject of the allegedly inaccurate or insufficient record;

(b) The correction of any record of criminal history found by the commission to be inaccurate, insufficient or incomplete in any material respect;

(c) The dissemination of corrected information to those persons or agencies which have previously received inaccurate or incomplete information; and

(d) A time limit of not more than 90 days within which an inaccurate or insufficient record of criminal history must be corrected and the corrected information disseminated. The corrected information must be sent to each person who requested the information in the 12 months preceding the date on which the correction was made, to the address given by each person who requested the information when the request was made.

SEC. 16. The commission is responsible for administering this chapter and may adopt regulations for that purpose. The commission shall:

1. Establish regulations for the security of the system of Nevada records of criminal history so that it is adequately protected from fire, theft, loss, destruction, other hazards and unauthorized access.

2. Adopt regulations and standards for personnel employed by agencies of criminal justice in positions of responsibility for maintenance and dissemination of records of criminal history.

as confidentially as is required by the laws of the state or other jurisdiction from which the information was received.

SEC. 11. No person who receives records of criminal history pursuant to this chapter may disseminate it further without express authority of law or in accordance with a court order. This section does not prohibit the dissemination of material by an employee of the electronic or printed media in his professional capacity for communication to the public.

SEC. 12. Each agency of criminal justice which maintains and disseminates records of criminal history must maintain a log of each dissemination of that information other than a dissemination of the fact that the agency has no record relating to a certain person. The log must be maintained for at least 1 year after the information is disseminated, and must contain:

1. An entry showing to what agency or person the records of criminal history were provided;
2. The date on which the information was provided;
3. The person who is the subject of the information; and
4. A brief description of the information provided.

SEC. 13. At any time after a date 5 years after the arrest of a person, or after 5 years after the date of issuance of a citation or warrant, for an offense for which the person was acquitted or which ended in a disposition favorable to the person, the person who is the subject of a record of criminal history relating to the arrest, citation or warrant may apply in writing to the agency which maintains the record to have it removed from the files which are available and generally searched for the purpose of responding to inquiries concerning the criminal history of a person. The agency shall remove the record unless:

1. The defendant is a fugitive.
2. The case is under active prosecution according to a current certificate of a prosecuting attorney.
3. The disposition of the case was a deferred prosecution, plea bargain or other similar disposition.
4. The person who is the subject of the record has a prior conviction for a felony or gross misdemeanor in any jurisdiction in the United States.
5. The person who is the subject of the record has been arrested for or charged with another crime, other than a minor traffic violation, during the 5 years since the arrest, citation or warrant which he seeks to have removed from the record.

This section does not restrict the authority of a court to order the deletion or modification of a record in a particular cause or concerning a particular person or event.

SEC. 14. 1. Agencies of criminal justice may disclose to victims of a crime, members of their families or their guardians the identity of persons suspected of being responsible for the crime, including juveniles, together with information, including dispositions, which may be of assistance to the victim in obtaining redress for his injury or loss in a civil action. This disclosure may be made regardless of whether charges have been filed, and even if a prosecuting attorney has declined to file charges or the charge has been dismissed.

3. Provide for audits of information systems by qualified public or private agencies, organizations or persons.

SEC. 17. Agencies of criminal justice may charge a reasonable fee for any Nevada records of criminal history furnished to any person or governmental entity except another agency of criminal justice.

SEC. 18. Any person who:

1. Willfully requests, obtains or seeks to obtain records of criminal history under false pretenses;

2. Willfully communicates or seeks to communicate records of criminal history to any agency or person except pursuant to this chapter; or

3. Willfully falsifies any record of criminal history or any record relating to records of criminal history,

is guilty of a misdemeanor.

SEC. 19. The system of criminal history records maintained by the Clark County data processing facility, supervised by the Las Vegas Metropolitan Police Department and known as SCOPE is designated for these purposes as a temporary repository for Nevada criminal history records.

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority			
2. Privacy and Security			
3. Dissemination Regulations	106-B:14 Reg. 3 S.O.P.(c)	X X X	
4. Inspection	Reg. 3,B9	X	
5. Challenge	Reg. 3C	X	
6. Judicial Review			
7. Purge: Non-Conviction	Reg. 3D	X	
8. Purge: Conviction	Reg. 3D	X	
9. Seal: Non-Conviction			
10. Seal: Conviction	651:5	X	
11. Remove Disqualification	651:5	X	
12. Deny CJ Record	651:5	X	
13. Research Access			
14. Accurate & Complete	106-B:14	X	
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty	106-B:14 651:5	X X	
18. Public Records	7A:1, 7A:4 91-A:4	X X	
19. Separate Files			
20. Intelligence Collection	Reg. 3	X	
21. Intelligence Dissemination			
22. Security	Reg. 1	X	
23. Transaction Logs	Reg. 2	X	
24. Train Employees			
25. List Systems	7-A:2	X	
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ	106-B:14 91-A:5	X X	

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

203 Ingram-L

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	E.O.	X	
2. Privacy and Security	E.O.	X	
3. Dissemination Regulations	2A:85-18 53:6-18	X X	
4. Inspection			
5. Challenge			
6. Judicial Review			
7. Purge: Non-Conviction			
8. Purge: Conviction			
9. Seal: Non-Conviction	2A:85-15	X	
10. Seal: Conviction	2A:164-28 2A:169-11 24:21-28	X X X	
11. Remove Disqualification	2A:164-28 2A:169-11 24:21-27	X X X	
12. Deny CJ Record	2A:85-22 24:21-28	X X	
13. Research Access			
14. Accurate & Complete	53:1-13	X	
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty			
18. Public Records	Reg. 1:38	X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security			
23. Transaction Logs			
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	4-25-8	X	
2. Privacy and Security			
3. Dissemination Regulations	Reg 75-6 41-25-8 41-24-3	X X	X
4. Inspection	Reg 75-6		X
5. Challenge			
6. Judicial Review			
7. Purge: Non-Conviction			
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification	41-24-1	X	
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete	39-3-8	X	
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty	71-5-3 4-25-8	X X	
18. Public Records	75-5-1	X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security	4-25-7	X	
23. Transaction Logs			
24. Train Employees	39-3-9	X	
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ	71-5-1	X	

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

NEW MEXICO STATE POLICE DEPARTMENT

INTER-DEPARTMENTAL CORRESPONDENCE

SUBJECT PROCEDURES FOR RELEASE OF STATE POLICE ARREST RECORD INFORMATION - CHAPTER 260, LAWS OF NEW MEXICO, EFFECTIVE 7-1-75

DATE June 20, 1975

FROM MARTIN E. VIGIL, CHIEF

TO ALL STATE POLICE MEMBERS

ATTENTION OF

Ladies and Gentlemen:

The attached law and the following procedures of this Department become effective July 1, 1975:

1. No State Police criminal arrest record information shall be released except by this Headquarters (Central Records Section, Information Division), and only under the following conditions:

   A. To full-time employees of bona fide, full-time law enforcement agencies in New Mexico or outside New Mexico having power of arrest.

   B. To the Attorney General, District Attorneys or the Courts, or their duly appointed agents, where such information is deemed necessary in the performance of their functions under law.

   C. To local, state and federal probation officers where such information is deemed necessary in the performance of their functions under law.

   D. To such other individuals and agencies which require criminal history record information to implement a statute or executive order that expressly refers to criminal conduct and contains requirements and/or exclusions expressly based upon such conduct.

   E. Military services recruiters and agents for governmental units conducting employment background investigations must furnish a notarized release (Form SP-CR-19), signed by the person whose record is being checked. This release will be retained by this Headquarters.

   F. Investigative reports containing arrest information shall not be released for insurance or other bona fide purposes unless all arrest data is obliterated.

   G. Private employers shall not have access to the arrest records of this Department.

   H. (1) Upon satisfactory verification of his identity, any individual may inspect, in person, through counsel or through his authorized agent, arrest record information maintained by the New Mexico State Police concerning him.

MICROFILMED FROM BEST AVAILABLE COPY

(2) The identified individual or his authorized representative may obtain copies of only the arrest information pertaining to the individual.

(i) Application to inspect, review or obtain copies of arrest records must be made in writing on Forms SP-CR-19 (agent authorization) or SP-CR-20 (individual request), or other approved forms.

(ii) Access to arrest records will be granted only during normal working hours of 8:00 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.

(iii) Pursuant to Section 39-2-26, NMSA, 1953 Compilation, costs of photo copies shall be $1.00 per surface copies, not to exceed $3.00 for multi-page reports, payable upon delivery of the copy. Each additional copy shall be charged at the same rate as the first.

NOTE: "Satisfactory verification of identity" will be determined by the Central Records Section, New Mexico State Police, and will generally be based upon fingerprint comparison.

I. Personnel assigned to contractual research for a valid criminal justice project shall be permitted access to arrest record information provided such personnel shall be subject to the provisions of Section 7 of the Arrest Record Information Act.

J. No criminal record information shall be given by telephone to any person other than to known personnel of the New Mexico State Police. Only Information Division employees will have access to the files for records checks.

NOTE: All arrest record releases will be accompanied by the following statement:

"CONFIDENTIAL: Arrest record information maintained by the State of New Mexico or any of its political subdivisions shall be confidential and dissemination or the revealing the contents thereof, except as provided in the Arrest Record Information Act, is unlawful."

Copies of this Directive will be posted in the Central Records Section of this Department.

Very truly yours,

MARTIN E. VIGIL, CHIEF
New Mexico State Police

cc: All New Mexico Sheriffs and Police Chiefs

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	Ex. Law 835	X	
2. Privacy and Security			
3. Dissemination Regulations	Corr. Law 211	X	
4. Inspection	Crim. Pro. 160.40 160.50 Pub. Off. Law .89	X X X	
5. Challenge			
6. Judicial Review			
7. Purge: Non-Conviction	Crim. Pro. 160.50	X	
8. Purge: Conviction			
9. Seal: Non-Conviction	Crim. Pro. 160.50	X	
10. Seal: Conviction	Crim. Pro. 170.56 Corr. Law 752	X X	
11. Remove Disqualification	Crim. Pro. 160.60	X	
12. Deny CJ Record	Crim. Pro. 160.60	X	
13. Research Access			
14. Accurate & Complete	Crim. Pro. 160.20 Corr. Law 211 Ex. Law 837-6	X X X	
15. Dedicate			
16. Civil Remedy	Corr. Law 755	X	
17. Criminal Penalty			
18. Public Records	Pub. Off. Law .87	X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination	Pub. Off. Law .87	X	
22. Security	Ex. Law 837	X	
23. Transaction Logs			
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

4/21

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	143 B-338	X	
2. Privacy and Security			
3. Dissemination Regulations	15-201	X	
4. Inspection	Reg. .0808		X
5. Challenge	Reg. .0808		X
6. Judicial Review			
7. Purge: Non-Conviction	90-96		X
8. Purge: Conviction	90-96		X
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record	90-96		X
13. Research Access	114-10.1	X	
14. Accurate & Complete	149.74	X	
15. Dedicate			
16. Civil Remedy	132-5.1	X	
17. Criminal Penalty	132-3	X	
18. Public Records	132-1	X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security			
23. Transaction Logs	Reg. .0808		X
24. Train Employees	17 B-1 17 A-1	X X	
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

NCJRS

BLANK PAGE

§ 90-96. Conditional discharge and expunction of records for first offense. — (a) Whenever any person who has not previously been convicted of any offense under this Article, or under any statute of the United States, or any state relating to controlled substances included in any schedule of this Article pleads guilty to or is found guilty of a misdemeanor under this Article by possessing a controlled substance included within Schedules III through VI of this Article, the court may without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Discharge and dismissal under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.

(b) Upon the dismissal of such person and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the North Carolina Department of Justice under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the North Carolina Department of Justice, the names of all persons convicted under this Article, together with the offense or offenses of which such persons were convicted. The clerk shall also file with the North Carolina Department of Justice the names of those persons granted a conditional discharge under the provisions of this Article, and the North Carolina Department of Justice shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted a conditional discharge.

(d) Whenever any person is charged with a misdemeanor under this Article by possessing a controlled substance included within Schedules III through VI of this Article, upon dismissal by the State of the charges against him, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, or trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury

MICROFILMED FROM BEST AVAILABLE COPY

.0808 INDIVIDUAL'S REVIEW OF CRIMINAL RECORD

(a) An individual has the right to review any criminal history record information maintained about him by the State Bureau of Investigation, Identification Section.

(b) Such review shall take place between the hours of 8:00 a.m. and 5:00p.m., or 8:30 a.m. and 5:30 p.m. at the discretion of the director, at the offices of the Identification Section of the State Bureau of Investigation. Effecitve December 1, 1976 an individual will also be able to review his record as maintained by the Identification Section at any State Bureau of Investigation district office in the state. Review will be had in the same manner as review is had at State Bureau of Investigation headquarters, except that the request must be filed at the district office and transmitted to State Bureau of Investigation headquarters. When the request is received with appropriate supporting documents, a copy of the record will be mailed to the district office. The district office will then establish a date for the review to take place in cooperation with the requesting individual.

(c) Review will be carried out under the supervision of the State Bureau of Investigation Director or his designate. No record may be removed from the State Bureau of Investigation premises, except that when an individual wishes to challenge a portion of the record, he will be given a copy of the portion of the record to which his challenge is addressed.

(d) Review is permitted only upon appropriate verification of identity. Identity is verified by providing a set of fingerprints and by filling out a form which requests information concerning other identifiers. The fingerprints will not be retained or copied and will be destroyed in the presence of the reviewing individual at the completion of the review. An individual may have counsel present when he reviews his record, and the review may be made by counsel when counsel presents power of attorney, a set of the client's fingerprints and the information required on the Request for Review Form.

(e) A record of each such review will be maintained by the Identification Section. Each such record will be completed and signed by the Supervisor of the Identification Section or such assistant, district supervisor or agent as is present at the review. The record will show the name of the reviewing individual, the date of the review and whether the individual took any exception to the accuracy, completeness or content of the information reviewed. The reviewing individual shall verify by his signature that he has reviewed his record.

(f) The reviewing individual may make a written summary or notes in his own handwriting of the information reviewed and take with him such notes. The reviewing individual may not take any copy of the record, and copies of the record will not be provided, except that, when an individual indicates that he wishes to challenge a portion of the record, a copy of such portion will be provided.

(g) Each reviewing individual shall be informed of his right to challenge criminal history record information under this regulation. Each individual shall be informed that he may submit written exceptions to the contents, completeness or accuracy of the information to the Supervisor of the Identification Section.

(h) The individual shall record any such exceptions, including an affirmance signed by the individual or his legal representative, that the exceptions are made in good faith and to the best of the individual's knowledge are believed to be true. Such exceptions will be taken under oath and become part of the record of review.

(i) The Identificaton Section shall cause an audit to be conducted of the individual's record to determine the accuracy of the exceptions. Upon completion of the audit, the individual will be informed in writing of the results of the audit.

Should the audit establish inaccuracies or omissions in the record, the Identification Section will cause appropriate additions, deletions or alterations to be made to the information and shall cause notice of such alterations or additions to be given to the Supervisor of the Identification Section, the individual involved, and any agency to which the inaccurate or incomplete information has been disseminated.

(j) If the audit fails to disclose inaccuracies, or if the individual wishes to present evidence concerning his claim of inaccuracy or incompleteness, following any refusal by the Supervisor of the Identification Section to alter or correct the record, he is entitled to an appeal from the decision of the Supervisor of the Identification Section. Such appeal will be conducted under the rules appearing in Sections .1200 and .1300 of this Chapter.

(k) Nothing in this rule shall be construed to prohibit the State Bureau of Investigation from giving a copy of an individual's record to a requesting individual when the request is made pursuant to the provisions of G.S. 15-223.

History Note: Statutory Authority G.S. 114-12 to -15;
28 C.F.R. Part 20;
Eff. September 20, 1976.

.0809 REQUEST FOR REVIEW; RECORD OF REVIEW

The State Bureau of Investigation provides a form for use by individuals who wish to request review of their records. The form is an affidavit which requests information concerning certain identifiers, an unequivocal statement of request to review the record, an affirmation by the individual that his fingerprints have been taken for purposes of comparison and that the fingerprints so provided were destroyed upon completion of review, and spaces for recording any exceptions to the accuracy or completeness of the record. The form is filled out in duplicate and signed by the individual upon the completion of the review. One copy is provided to the individual and one retained by the State Bureau of Investigation.

MICROFILMED FROM BEST AVAILABLE COPY

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority			
2. Privacy and Security			
3. Dissemination Regulations	12-60-15	X	
4. Inspection			
5. Challenge			
6. Judicial Review			
7. Purge: Non-Conviction			
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete	12-60-11 12-60-16	X X	
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty			
18. Public Records	21-04-18	X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security			
23. Transaction Logs			
24. Train Employees	109.71	X	
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority			
2. Privacy and Security			
3. Dissemination Regulations	149.43 5122.53 2953.32	X X X	
4. Inspection	2953.32	X	
5. Challenge			
6. Judicial Review			
7. Purge: Non-Conviction	190.60	X	
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction	2951.04 2953.32	X X	
11. Remove Disqualification	2953.33	X	
12. Deny CJ Record	2953.33	X	
13. Research Access			
14. Accurate & Complete	109.57	X	
15. Dedicate			
16. Civil Remedy	149.99 1343.10	X X	
17. Criminal Penalty	149.43 1347.99 2953.35	X X X	
18. Public Records	1340.01	X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security	1347.05	X	
23. Transaction Logs			
24. Train Employees			
25. List Systems	1347.03	X	
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ	1347.04 149.43	X X	

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	74-8.1	X	
2. Privacy and Security			
3. Dissemination Regulations	68-205 22-385 74-118.17 74-150.5	X X X X	
4. Inspection	22-982	X	
5. Challenge	22-982	X	
6. Judicial Review			
7. Purge: Non-Conviction	74-150.7	X	
8. Purge: Conviction	74-150.7	X	
9. Seal: Non-Conviction			
10. Seal: Conviction	11-794 22-991C 63-2-410	X X X	
11. Remove Disqualification			
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete	74-150.10	X	
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty	21-461 21-531 74-118.17	X X X	
18. Public Records	6-208 51-24 63-301	X X X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security	74-118.17	X	
23. Transaction Logs			
24. Train Employees	74-150.2	X	
25. List Systems	74-118.13	X	
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

0 K - 8 E O E 8

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	181.555 E.O. 75-23	X X	
2. Privacy and Security	E.O. 75-23, (10, 11)	X	
3. Dissemination Regulations	E.O. 75-23 137.077 Reg. 257-10 -020, 025	X X	X
4. Inspection	137.079 181.555 E.O. 75-23 Reg. 257-10-035	X X X	X
5. Challenge	E.O. 75-23 181.555 Reg. 257-10-035	X X	X
6. Judicial Review	137.079 Reg. 257-10-035 257-10-050	X	X X
7. Purge: Non-Conviction			
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction	137.225	X	
11. Remove Disqualification	137.275 137.260	X X	
12. Deny CJ Record	137.225	X	
13. Research Access	E.O. 75-23 (3,6)	X	
14. Accurate & Complete	181.521 181.511 E.O. 75-23 Reg. 257-10-020	X X X	X
15. Dedicate			
16. Civil Remedy	192.490	X	
17. Criminal Penalty	162.305	X	
18. Public Records	192.001	X	
19. Separate Files			
20. Intelligence Collection	E.O. 75-23	X	
21. Intelligence Dissemination	192.500	X	
22. Security	E.O. 75-23 Reg. 257.10.020	X	X
23. Transaction Logs	Reg. 257-10-035		X
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ	192.500	X	
27. F.O.I. Excluding CJ	181.540 192.500	X X	

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

OREGON ADMINISTRATIVE RULES

CHAPTER 257

OREGON STATE POLICE

Table of Contents

DIVISION 10

OREGON CRIMINAL OFFENDER INFORMATION SYSTEM

257-10-010 Scope of System
257-10-015 Definitions
257-10-020 System Responsibilities
257-10-025 Access to and Use of Criminal Offender Information
257-10-030 Criminal Justice Research and Evaluation Projects
257-10-035 Access by Individuals for Purpose of Review and/or Challenge
257-10-040 Annual Audits
257-10-045 Violation of Rules
257-10-050 Rights of Appeal

MICROFILMED FROM BEST AVAILABLE COPY

OREGON

DIVISION 10

OREGON CRIMINAL OFFENDER INFORMATION SYSTEM

Scope of System

257-10-010 Rules adopted herein relate solely to the Oregon Criminal Offender Information System as maintained by the Oregon State Police. The Rules do not affect in any way other agencies' original records of arrest, arrest logs, or reports of crimes available for inspection under terms of the Oregon Public Records Law (ORS 192.410 to 192.500).

Oregon Criminal Offender Information files contain information, contributed by Criminal Justice Agencies, on a person's record of arrests, the nature and disposition of criminal charges, sentencing, confinement, and release, plus identifying data only relating to fingerprints of applicants submitted under Oregon Law. These files shall not permanently contain information about the political, religious, or social views, associations, or activities of any individual, group, association, corporation, business, or partnership unless such information directly relates to an investigation of past or threatened criminal acts or activities and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal acts or activities.

The Oregon CCH System is a computerization of essentially the same criminal offender information, and is maintained by the OSP under provisions of Oregon Law. Computerization of the manually accessed paper file is designed to provide faster access to criminal offender information for Oregon Criminal Justice Agencies.

Statutory Authority: ORS Chapter 181
Hist: Filed 6-14-74 as DSP 2,
Eff. 7-11-74
Amended 4-22-76 by DSP 4,
Eff. 4-30-76

257-10-015 As used in these rules:

(1) "Criminal Offender Information" means records and related data, including fingerprints, received, compiled, and disseminated by the Oregon State Police for purposes of identifying criminal offenders and alleged offenders and maintained as to such persons' records of arrest, the nature and disposition of criminal charges, sentencing, confinement and release, and includes the OSP Computerized Criminal History System.

(2) "Computerized Criminal History (CCH) System" means the maintenance in online computer files of significant criminal offender information.

(3) "OSP" means the Oregon State Police and includes the OSP Bureau of Criminal Identification.

(4) "LEDS" means the Oregon Law Enforcement Data System.

(5) "Oregon CCH System" means the Oregon Computerized Criminal History System.

(6) "NCIC-CCH System" means the national computerized criminal history system maintained and operated by the FBI.

(7) "Interstate System" means the NCIC-CCH system and the network of participating states and agencies.

(8) "Criminal Justice Agency" means:

(a) The Governor

(b) Courts of Criminal Jurisdiction

(c) The Attorney General

(d) District Attorneys

(e) Law Enforcement Agencies

(f) The Corrections Division

(g) The State Board of Parole, and

(h) Any other state or local agency designated by order of the Governor.

(9) "State Control Terminal" means the agency within each state responsible for the NCIC interface to that state.

(10) "Law Enforcement Agency" means County Sheriffs, Municipal Police Departments, State Police, other police officers of this and other states and law enforcement agencies of the Federal Government.

(11) "Criminal Records Council" means that Council, advisory to the Governor established under the provisions of Executive Order 75-23.

Statutory Authority: ORS Chapter 181
Hist: Filed 6-14-74 as DSP 2,
Eff. 7-11-74
Amended 4-22-76 by DSP 4,
Eff. 4-30-76

System Responsibilities

257-10-020 (1) Oregon State Police.

(a) Maintenance and Dissemination of Criminal Offender Information. The Oregon State Police has statutory and administrative responsibility for the maintenance and dissemination of criminal offender information in Oregon.

(b) Accuracy and Completeness of Information. Information entered into Criminal Offender Information files is based on written documents submitted to the OSP by Criminal Justice Agencies reporting their record of official action, which documents contain fingerprint or other verification as to the identity of the individual to whom the information refers.

OSP is responsible for the accuracy and completeness of information entered into the Oregon Criminal Offender Information System and any information subsequently transmitted for inclusion in the NCIC-CCH System.

This responsibility extends only to information contained in the documents as submitted to OSP.

(c) Removal of Information. OSP is responsible for removal of information from the Oregon Criminal Offender Information and the NCIC-CCH System where required by law or court order. In the event the OSP discovers there has been an erroneous entry in criminal offender information records maintained by it, it shall make a reasonable effort to notify any recipient person or agency known to have received such information within a reasonable period preceding discovery of the error, of the fact of such error and of the correct information. Any such erroneous or inaccurate information shall be purged from the record and replaced by the correct information.

(d) Entry of Information. Only terminals located at OSP or others designated by the Superintendent of the OSP are allowed to enter records into the Oregon system or to change existing records.

(e) Information to Qualified Criminal Justice Agencies. OSP is responsible for providing Criminal Offender information to qualified Criminal Justice Agencies. Such information will be furnished, after proper inquiry, in either computerized form, via LEDS or document form.

(f) Development of Operational Procedures. OSP is responsible for development of operational procedures to be followed by Criminal Justice Agencies having access to Oregon Criminal Offender Information and NCIC-CCH files.

(g) All Criminal Offender information distributed by the OSP shall contain a notice in writing in substantially the following language: "All persons are advised that the information contained in this report can only be considered accurate for a period of six months from the date of this report. For accurate information, new inquiry must be made."

All agencies shall insofar as is feasible, taking into consideration the then existing capability of the OSP to respond, request and obtain a current criminal offender information record when that record is to be disseminated outside that agency.

(2) Law Enforcement Data System - Executive Department.

(a) NCIC Control Terminal Responsibility. LEDS is the "state control terminal" for the NCIC interface to Oregon and is responsible for assuring that all policies and rules for access to the Oregon or the NCIC-CCH System are adhered to by Oregon user agencies.

(b) System Development and Operation. LEDS is responsible for providing the computer hardware and software capabilities necessary to insure that efficient processing and integrity of the information stored in the Oregon CCH System and for interfacing to the NCIC-CCH System.

(c) Physical Security of Computer Installation. LEDS is responsible for development and implementation of policies and procedures to safeguard the CCH information at the central computer site from accidental or malicious damage or unauthorized access or use.

(d) Audit and Inspection of the User Agencies. LEDS is responsible for periodically auditing and inspecting each terminal location accessing CCH or the FBI NCIC-CCH to insure compliance with the published rules, policies, and procedures.

CCH terminal transaction records will be maintained at and by LEDS and will be made available to participating Criminal Justice Agencies.

Statutory Authority: ORS Chapter 181
Hist: Filed 6-14-74 as DSP 2,
Eff. 7-11-74
Amended 4-22-76 by DSP 4,
Eff. 4-30-76

Access to and Use of Criminal Offender Information

257-10-025 (1) Access to OSP Criminal Offender information by any means shall be limited to:

(a) Criminal Justice Agencies, where the information is to be used for criminal justice purposes or criminal justice agency employment.

(b) Other state and local agencies, after application to the Criminal Records Council and upon Executive Order of the Governor, where the information is required to implement a Federal or State Statute or Executive Order that expressly refers to criminal conduct and contains requirements or exclusions expressly based on such conduct.

(2) Access to CCH information by means of terminals shall be limited to authorized Criminal Justice Agencies using their agency identification number (ORI).

(3) Inquiries for nonofficial purposes or the checking of records for unauthorized persons or agencies outside the Criminal Justice community is prohibited.

(4) Criminal Offender information may be furnished only to authorized agency employees and no person who has been convicted of a crime which could have resulted in a sentence to a Federal or State Penitentiary will be allowed to operate a terminal accessing CCH information or have access to Criminal Offender information.

Exceptions to this rule may be made in extraordinary circumstances upon written application to the Superintendent of the Oregon State Police setting forth such circumstances. The Superintendent of the OSP will maintain a central file where such exception authorization shall be filed.

(5) Screening of Criminal Justice Agency and Regional Criminal Justice information system employees who have access to CCH or Criminal Offender Information records is the responsibility of the employing agency.

(6) Any Criminal Justice Agency obtaining Criminal Offender information or NCIC-CCH information, either directly through that agency's terminals, or through the terminal of another Criminal Justice Agency, must have executed a written agreement with the OSP prior to such access.

(7) Security of Terminals. Any terminal with CCH accessing capability must be physically secure and placed in a location not available to unauthorized persons. Terminals must be so placed that unauthorized persons may not observe the content of messages transmitted or received on such terminal.

(8) Security of Criminal Offender Information Records. Any Criminal Justice Agency obtaining Criminal Offender information shall maintain those records in secure files until they are destroyed by burning or shredding, and shall treat those records in such a manner that the record does not become public information in any later proceeding, except through court order or as otherwise provided by law.

(9) Radio Transmission. Any radio transmission of Criminal Offender Information records shall be limited to essential details only, with information identifying individuals and offenses concealed insofar as possible.

Plain text transmission of an entire (summary or full CCH) record is prohibited.

Statutory Authority: ORS Chapter 181
Hist: Filed 6-14-74 as DSP 2,
Eff. 7-11-74
Amended 4-22-76 by DSP 4,
Eff. 4-30-76

Criminal Justice Research and Evaluation Projects

257-10-030 Criminal Offender information will be made available to qualified persons for research and evaluation related to criminal justice activity upon written application to the Criminal Records Council or, in exigent circumstances for temporary access to the Superintendent of the Oregon State Police but authorization to utilize such information will be conditioned upon:

(1) The execution of nondisclosure agreements by all participants in the program.

(2) When such qualified persons acknowledge a fundamental commitment to respect individual privacy interests with the identification of subjects of such information divorced as fully as possible from the data received, and agree to comply with any additional requirements and conditions found necessary to assure the protection of personal privacy and system security interests, and,

(3) When a specific agreement is executed between such qualified persons and the OSP, the agreement stating the scope of the project, the permissible dissemination of information for any purpose other than that for which it was obtained.

(4) Where temporary access is authorized by the Superintendent of the OSP, he shall report the reasons for such temporary grant to the Criminal Records Council for review and comment at its next regular meeting. No temporary grant of access shall be valid for more than 30 days or after the next regularly scheduled Council meeting, whichever period is longer.

(5) OSP and LEDS will retain the right to monitor and audit any approved criminal justice research and evaluation project and to terminate access to CCH or Criminal Offender information if a violation of this rule is detected.

Statutory Authority: ORS Chapter 181
Hist: Filed 6-14-74 as DSP 2,
Eff. 7-11-74
Amended 4-22-76 by DSP 4,
Eff. 4-30-76

Access by Individuals for Purpose of Review and/or Challenge

257-10-035 (1) Any individual desiring to review information concerning himself maintained in the OSP Criminal Offender Record System, or who believes that the information as maintained is inaccurate, incomplete, or maintained in violation of any State or Federal statute or act, shall be entitled to review such information and obtain a copy thereof for the purpose of challenge or correction. The OSP shall not charge an individual for a reasonable request to provide him with a copy of Criminal Offender information which refers to him.

(2) Verification of such individual's identity may only be effected through submission, in writing, of name, date of birth, and a set of rolled ink fingerprints to the Oregon State Police. The request for review may be made at the General Headquarters of the Oregon State Police, Salem, Oregon, or through any Oregon Criminal Justice Agency. The OSP may prescribe reasonable hours and places of inspection.

If the request is made at other than the General Headquarters of the Oregon State Police and, after positive identification by the OSP of the fingerprints submitted, copy of the record, along with the fingerprints submitted for that purpose, will be forwarded to the Criminal Justice Agency to whom the request was made.

(3) Upon receipt of such record that agency shall furnish same to the individual named in the record and at the same time return to that individual the fingerprints submitted for positive identification.

(4) All data included in the Criminal Offender information record is obtained from contributing Criminal Justice Agencies.

If after review of the information concerning himself as maintained in such record, the individual believes that it is incomplete or incorrect in any respect and wishes changes, corrections, or updating of the alleged deficiency, he must make application directly to the contributor of the questioned information, requesting the appropriate agency to correct it in accordance with its respective administrative rules and procedures. Upon receipt of an official communication directly from the agency which contributed the original information, the OSP will make any changes necessary in accordance with the information supplied by the agency.

(5) Any individual whose record is not removed, modified, or corrected as he may request, following refusal by the agency originally contributing such information, may proceed under the provisions of Rules 30.00 to 30.80 of the Attorney General's Model Rules of Practice and Procedures under the Administrative Procedure Act, relating to contested cases and judicial review.

After conclusion of such procedure or review, any information found to be inaccurate, incomplete, or improperly maintained, shall be removed from the individual's record and the originating agency so notified with copy of the record as corrected being furnished to the challenging individual.

(6) Any Criminal Justice Agency receiving a record after such notice of contested case has been filed and prior to final determination, shall be notified by the OSP that the record is being challenged.

Statutory Authority: ORS Chapter 181
Hist: Filed 6-14-74 as DSP 2,
Eff. 7-11-74
Amended 4-22-76 by DSP 4,
Eff. 4-30-76

Annual Audits

257-10-040 At least once annually, the Governor shall cause to be conducted a random audit of the practices and procedures of the OSP and LEDS concerning information collected and disseminated pursuant to Executive Orders 74-6 and 75-23 and these rules to insure compliance with the requirements and restrictions set forth.

Statutory Authority: ORS Chapter 181
Hist: Filed 6-14-74 as DSP 2,
Eff. 7-11-74
Amended 4-22-76 by DSP 4,
Eff. 4-30-76

Violation of Rules

257-10-045 Willful violation of published rules relating to Criminal Offender Information record by any authorized agency or employee may result in immediate termination of such agency's right to receive such information from the Oregon System and/or the NCIC-CCH System.

Reinstatement will be effected only upon demonstration by the Agency that the cause of such violation has been corrected. Final determination as to the reinstatement of any agency so terminated will be the responsiblity of the OSP.

Statutory Authority: ORS Chapter 181
Hist: Filed 6-14-74 as DSP 2,
Eff. 7-11-74
Amended 4-22-76 by DSP 4,
Eff. 4-30-76

Rights of Appeal

257-10-050 A Criminal Justice Agency or employee desiring to appeal any action, order, or administrative ruling by the OSP or LEDS may proceed under the provisions of Rules 30.00 to 30.80 of the Attorney General's Model Rules of Practice and Procedures under the Administrative Procedure Act relating to contested cases and judicial review.

Statutory Authority: ORS Chapter 181
Hist: Filed 6-14-74 as DSP 2,
Eff. 7-11-74
Amended 4-22-76 by DSP 4,
Eff. 4-30-76

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	HB2095(601) E.O. 1975-10	X	X
2. Privacy and Security			
3. Dissemination Regulations	HB2095(301) 61.13	X	X
4. Inspection	HB2095(601) E.O. 1975-10	X	X
5. Challenge	HB2095(601) E.O. 1975-10	X	X
6. Judicial Review	HB2095(602)		X
7. Purge: Non-Conviction	HB2095(302)		X
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification	HB2095(304)		X
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete	.HB2095(502) .HB2095(701) .19.1403 .61.16	 X X	X X
15. Dedicate			
16. Civil Remedy	HB2095(903)		X
17. Criminal Penalty	HB2095(902) 19.1406	X	X
18. Public Records	65.66.1	X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination	65.66.1	X	
22. Security	HB2095(401) E.O. 1975-10	X	X
23. Transaction Logs	HB2095(602		X
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

DOCUMENT - 0

BLANK PAGE

Official Advance Copy of Statute Enacted at 1978 Session

No. 1978-305

AN ACT

HB 2095

Relating to criminal history record information: providing for the protection of individual right to privacy and for the completeness and accuracy of, the control of dissemination of, the establishment of guidelines for the security of, and provision for quality control of criminal history record information; and providing for the right of individuals to inspect, review and challenge the accuracy of such information; and providing penalties for violations of this act.

TABLE OF CONTENTS

Chapter 1. General Provisions

Section 101. Short title.
Section 102. Definitions.
Section 103. Applicability.
Section 104. Scope.
Section 105. Other criminal justice information.
Section 106. Prohibited information.

Chapter 2. Completeness and Accuracy

Section 201. Duties of criminal justice agencies.
Section 202. Mandatory fingerprinting.
Section 203. Disposition reporting by criminal justice agencies.
Section 204. Correction of inaccurate information.

Chapter 3. Dissemination of Criminal History Record Information

Section 301. General regulations.
Section 302. Expungement.
Section 303. Juvenile records.
Section 304. Use of records.
Section 305. Use of records for employment.

Chapter 4. Security

Section 401. Security requirements for repositories.

Chapter 5. Audit

Section 501. Annual audit of repositories.
Section 502. Quality control.

Chapter 6. Individual Right of Access and Review

Section 601. Right to access and review.
Section 602. Procedure.
Section 603. Individual rights on access and review.

Chapter 7. Responsibility of Attorney General

Section 701. Duties of the Attorney General.

Chapter 8. Public Notice

Section 801. Requirements of repositories relating to public notice.

Chapter 9. Sanctions

Section 901. General administrative sanctions.
Section 902. Criminal penalties.
Section 903. Civil actions.

Chapter 10. Effective Date and Repealer

Section 1001. Repealer.
Section 1002. Effective date.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

CHAPTER 1
GENERAL PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the "Criminal History Record Information Act."

Section 102. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section, unless the context clearly indicates otherwise:

"Administration of criminal justice." The activities directly concerned with the prevention, control or reduction of crime, the apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders; criminal identification activities; or the collection, storage dissemination or usage of criminal history record information.

"Audit." The process of reviewing compliance with applicable Federal and State laws and regulations related to the privacy and security of criminal history record information.

"Central repository." The central location for the collection, compilation, maintenance and dissemination of criminal history record information by the Pennsylvania State Police.

"Criminal history record information." Information collected by criminal justice agencies concerning individuals, consisting of identifiable descriptions, dates and notations of arrests, detentions, indictments, informations or other formal charges and any dispositions arising therefrom. The term does not include intelligence information,

investigative information or treatment information, including medical and psychological information, or information and records specified in section 104.

"Criminal justice agency." Any court, including the minor judiciary with criminal jurisdiction or any other governmental agency, or subunit thereof, created by statute or by the State or Federal constitutions, specifically authorized to perform as its principal function the administration of criminal justice, and which allocates a substantial portion of its annual budget to such function. Criminal justice agencies include, but are not limited to: organized State and municipal police departments, local detention facilities, county, regional and State correctional facilities, probation agencies, district or prosecuting attorneys, parole boards and pardon boards.

"Disposition." Information indicating that criminal proceedings have been concluded, including information disclosing that police have elected not to refer a matter for prosecution, that a prosecuting authority has elected not to commence criminal proceedings or that a grand jury has failed to indict and disclosing the nature of the termination of the proceedings; or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement. Dispositions of criminal proceedings in the Commonwealth shall include, but not be limited to, acquittal, acquittal by reason of insanity, pretrial probation or diversion, charge dismissed, guilty plea, nolle prosequi, no information filed, nolo contendere plea, convicted, abatement, discharge under rules of the Pennsylvania Rules of Criminal Procedure, demurrer sustained, pardoned, sentence commuted, mistrial-defendant discharged, discharge from probation or parole or correctional supervision.

"Dissemination." The oral or written transmission or disclosure of criminal history record information to individuals or agencies other than the criminal justice agency which maintains the information.

"Expunge."

(1) to remove information so that there is no trace or indication that such information existed; or

(2) to eliminate all identifiers which may be used to trace the identity of an individual, allowing remaining data to be used for statistical purposes.

"Repository." Any location in which criminal history record information is collected, compiled, maintained and disseminated by a criminal justice agency.

"Secondary dissemination." The subsequent transmission or disclosure of criminal history record information received from a repository or confirmation of the existence or nonexistence of criminal history record information received from a repository.

MICROFILMED FROM BEST AVAILABLE COPY

Section 103. Applicability.

This act shall apply to persons within the Commonwealth and to any agency of the Commonwealth or its political subdivisions which collects, maintains, disseminates or receives criminal history record information.

Section 104. Scope.

(a) Except for the provisions of Chapters 2, 4 and 6, nothing in this act shall be construed to apply to:

(1) Original records of entry compiled chronologically, including, but not limited to, police blotters.

(2) Any documents, records or indices prepared or maintained by or filed in any court of this Commonwealth, including but not limited to the minor judiciary.

(3) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons.

(4) Announcements of executive clemency.

(b) Court dockets and police blotters and information contained therein shall, for the purpose of this act, be considered public record.

(c) Where court dockets are not maintained any reasonable substitute containing that information traditionally available in court dockets shall, for the purpose of this act, be considered public record.

(d) Nothing in this act must be interpreted to limit the disclosure by the arresting authority, a court, or other criminal justice agency having legal jurisdiction over the individual to any individual or agency of the current status of an individual involved in a criminal case in progress or for which an individual is currently in the criminal justice system so long as such information is disseminated no more than 180 days from the occurrence of any final official action by or final release from the supervision, custody or jurisdiction of that agency.

(e) Nothing in this act shall prohibit a criminal justice agency from disclosing an individual's prior criminal activity to an individual or agency if the information disclosed is based on records set forth in section 104.

(f) Information collected by noncriminal justice agencies and individuals from the sources identified in this section shall not be considered criminal history record information.

Section 105. Other criminal justice information.

Nothing in this act shall be construed to apply to information concerning juveniles, except as provided in section 303, unless they have been adjudicated as adults, nor shall it apply to intelligence information, investigative information, treatment information, including medical and psychiatric information, caution indicator information, modus operandi information, wanted persons information, stolen property information, missing persons information, employment history information, personal history information, nor presentence investigation information. Criminal history record information maintained as a part of these records shall not be disseminated unless in compliance with the provisions of this act.

Section 106. Prohibited information.

The following kinds of information shall not be collected in the central repository nor in any automated or electronic criminal justice information system:

(1) intelligence information;

(2) investigative information; and

(3) treatment information, including but not limited to medical or psychological information.

CHAPTER 2
COMPLETENESS AND ACCURACY

Section 201. Duties of criminal justice agencies.

It shall be the duty of every criminal justice agency within the Commonwealth to maintain complete and accurate criminal history record information and to report such information at such times and in such manner as required by the provisions of this or other acts.

Section 202. Mandatory fingerprinting.

(a) Fingerprints of all persons arrested for a felony, misdemeanor or summary offense which becomes a misdemeanor on a second arrest after conviction of that summary offense, shall be taken by the arresting authority, and within 48 hours of the arrest, shall be forwarded to, and in a manner and such a form as provided by, the central repository.

(b) Where private complaints for a felony or misdemeanor result in a conviction or offenses under 18 Pa.C.S. § 3929 (relating to retail theft), the issuing authority shall order the defendant to submit for fingerprinting by the municipal police of the jurisdiction in which the offense allegedly was committed or in the absence of a police department the State police. Fingerprints so obtained shall be forwarded immediately to the central repository.

(c) The central repository shall transmit the criminal history record information to the criminal justice agency which submitted the fingerprint card.

Section 203. Disposition reporting by criminal justice agencies.

(a) All criminal justice agencies, including but not limited to, courts, county, regional and State correctional institutions and parole and probation agencies, shall collect and submit reports of dispositions occurring within their respective agencies for criminal history record information, within 90 days of the date of such disposition to the central repository as provided for in this section.

(b) Courts shall collect and submit criminal court dispositions as required by the Administrative Office of Pennsylvania Courts.

(c) County, regional and State correctional institutions shall collect and submit information regarding the admission, release and length of sentence of individuals sentenced to local and county institutions as required by the Bureau of Correction.

MICROFILMED FROM BEST AVAILABLE COPY

(d) County probation and parole offices shall collect and submit information relating to the length of time and charges for which an individual is placed under and released from the jurisdiction of such agency as required by the Pennsylvania Board of Probation and Parole.

(e) The Administrative Office of Pennsylvania Courts, the Bureau of Correction, the Pennsylvania Board of Probation and Parole and the Pennsylvania Board of Pardons, shall collect and submit to the central repository such information necessary to maintain complete and accurate criminal history record information. Each state agency listed in this subsection shall submit to the central repository any reports of dispositions occurring within their respective agencies and such information reported from county and local criminal justice agencies.

Section 204. Correction of inaccurate information.

Within 15 days of the detection of inaccurate data in a criminal history record, regardless of the manner of discovery, the criminal justice agency which reported the information shall comply with the following procedures to effect correction:

(1) Correct its own records.

(2) Notify all recipients, including the central repository, of the inaccurate data and the required correction.

CHAPTER 3
DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION

Section 301. General regulations.

(a) The Attorney General shall establish in accordance with the provisions of the Commonwealth Documents Law, regulations concerning the dissemination of criminal history record information which shall distinguish between conviction and nonconviction data.

(b) Any criminal justice agency which disseminates criminal history record information must indicate to the recipient that the information disseminated is only that information contained in its own file, the date of the last entry, and that a summary of the Statewide criminal history record information may be obtained from the central repository.

(c) Except during joint criminal investigations, no secondary dissemination of criminal history record information is permitted except as provided for by this act.

(d) No duplication of criminal history record information by any criminal justice agency except for its own internal use, or by any individual receiving criminal history record information is permitted.

(e) All noncriminal justice agencies or individuals or agencies receiving criminal history record information must return to the disseminating agency or destroy, in accordance with an agreement with the repository, all such information received upon completion of the specific purpose for which criminal history record information was received; nor shall such information be permanently incorporated into the files or records of the agency or individual receiving it.

(f) Repositories must enter as a permanent part of an individual's criminal history record information file, a listing of all persons and agencies to whom they have disseminated that particular criminal history record information and the date and purpose for which the information was disseminated. Such listing shall be maintained separate from the record itself.

(g) Any noncriminal justice official, agency or organization requesting criminal history record information prior to receipt of any such criminal history record information, must sign a contract with the repository from which it is seeking criminal history record information, agreeing to abide by the provisions of this act. Any such noncriminal justice official, agency or organization entering into such a contract with a repository is bound by and subject to the provisions of this act.

(h) Except as otherwise provided in this act, no criminal history record information acquired from repositories other than the central repository shall be permanently incorporated into the files or records of the criminal justice agency or individual and must be destroyed upon completion of the specific purpose for which such information was received.

Section 302. Expungement.

(a) Criminal history record information shall be expunged in a specific criminal proceeding when:

(1) no disposition has been received or, upon request for criminal history record information, no disposition has been recorded in the repository within 18 months after the date of arrest and the court of proper jurisdiction certifies to the director of the repository that no disposition is available and no action is pending. Expungement shall not occur until the certification from the court is received and the director of the repository authorizes such expungement; or

(2) a court order requires that such nonconviction data be expunged.

(b) Criminal history record information may be expunged when:

(1) an individual who is the subject of the information reaches 70 years of age and has been free of arrest or prosecution for ten years following final release from confinement or supervision; or

(2) an individual who is the subject of the information has been dead for three years.

(c) Notwithstanding, any other provision of this act, the prosecuting attorney and the central repository shall, and the court may, maintain a list of the names and other criminal history record information of persons whose records are required by law or Court Rule to be expunged where the individual has successfully completed the conditions of any pre-trial or post-trial diversion or probation program. Such information shall be used solely for the purpose of determining subsequent eligibility for such programs. Criminal history record information may be expunged as provided in section 302(b)(1) and (2). Such information shall be made available to any court upon request.

(d) Notice of expungement shall promptly be submitted to the central respository which shall notify all criminal justice agencies which have received the criminal history record information to be expunged.

(e) Public records listed in section 104 shall not be expunged.

(f) No expungement shall be made without ten days prior notice to the district attorney of the county where the original charges were filed.

Section 303. Juvenile records.

(a) Notwithstanding the provisions of section 105 and except upon cause shown, expungement of records of juvenile delinquency cases wherever kept or retained shall occur after ten days notice to the district attorney, whenever the court upon its motion or upon the motion of a child or the parents or guardian finds:

(1) a complaint is filed which is not substantiated or the petition which is filed as a result of a complaint is dismissed by the court;

(2) five years have elapsed since the final discharge of the person from commitment, placement, probation or any other disposition and referral and since such final discharge, the person has not been convicted of a felony, misdemeanor or adjudicated delinquent and no proceeding is pending seeking such conviction or adjudication; or

(3) the individual is 21 years of age or older and a court orders the expungement.

(b) The court shall give notice of the applications for the expungement of juvenile records to the prosecuting attorney.

(c) All records of children alleged to be or adjudicated dependent, may be expunged upon court order after the child is 21 years of age or older.

Section 304. Use of records.

(a) Except as provided by this act, a board, commission or department of the Commonwealth, when determining eligibility for licensing, certification, registration or permission to engage in a trade, profession or occupation, may consider convictions of the applicant of crimes but the convictions shall not preclude the issuance of a license, certificate, registration or permit.

(b) The following information shall not be used in consideration of an application for a license, certificate, registration, or permit:

(1) Records of arrest if there is no conviction of a crime based on the arrest.

(2) Convictions which have been annulled or expunged.

(3) Convictions of a summary offense.

(4) Information that the individual has received a pardon from the Governor.

(c) Boards, commissions or departments of the Commonwealth authorized to license, certify, register or permit the practice of trades, occupations or professions may refuse to grant or renew, or may suspend

or revoke any license, certificate, registration or permit for the following causes:

(1) Where the applicant has been convicted of a felony.

(2) Where the applicant has been convicted of a misdemeanor which relates to the trade, occupation or profession for which the license, certificate, registration or permit is sought.

(d) The board, commission or department shall notify the individual in writing of the reasons for a decision which prohibits the applicant from practicing the trade, occupation or profession if such decision is based in whole or part on conviction of any crime.

Section 305. Use of records for employment.

(a) Whenever an employer is in receipt of information which is part of an employment applicant's criminal history record information file, it may use that information for the purpose of deciding whether or not to hire the applicant, only in accordance with this section.

(b) Convictions for felonies, as well as misdemeanor convictions and arrests for offenses, which relate to the applicant's suitability for employment in the position for which he has applied may be considered by the employer. Misdemeanor convictions and arrests for offenses which do not relate to the applicant's suitability for employment in the position for which he has applied shall not be considered by the employer.

(c) The employer shall notify in writing the applicant if the decision not to hire the applicant is based in whole or in part on criminal history record information.

CHAPTER 4
SECURITY

Section 401. Security requirements for repositories.

Every criminal justice agency collecting, storing or disseminating criminal history record information shall ensure the confidentiality and security of criminal history record information by providing that wherever such information is maintained, a criminal justice agency must:

(1) Institute procedures to reasonably protect any repository from theft, fire, sabotage, flood, wind or other natural or man-made disasters.

(2) Select, supervise and train all personnel authorized to have access to criminal history record information.

(3) Ensure that, where computerized data processing is employed, the equipment utilized for maintaining criminal history record information is solely dedicated to purposes related to the administration of criminal justice, or, if the equipment is not used solely for the administration of criminal justice, the criminal justice agency shall be accorded equal management participation in computer operations used to maintain the criminal history record information.

(4) Provide that criminal history record information maintained in a repository is disseminated upon proper validation only to those individuals and agencies authorized to receive the information by the provisions of this act.

CHAPTER 5
AUDIT

Section 501. Annual audit of repositories.

(a) The Attorney General shall conduct annual audits of the central repository and of a representative sample of all repositories to ensure that the provisions of this act are upheld.

(b) Persons conducting the audit shall be provided access to all records, reports and listings required to conduct an audit of criminal history record information, and all persons with access to such information or authorized to receive such information shall cooperate with and provide information requested.

(c) The audit shall contain a report of deficiencies and recommendations for the correction of such deficiencies. Upon the completion of every audit, the audited agency shall carry out the recommendations within a reasonable period of time unless the audit report is appealed to the Attorney General and the appeal is upheld.

(d) The Attorney General shall have the power to modify the corrective measures recommended by the audit.

Section 502. Quality control.

Each repository shall establish effective procedures, in compliance with rules and regulations promulgated by the Attorney General[1] for the completeness and accuracy of criminal history record information.

CHAPTER 6
INDIVIDUAL RIGHT OF ACCESS AND REVIEW

Section 601. Right to access and review.

(a) Any individual or his legal representative has the right to review, challenge, correct and appeal the accuracy and completeness of his criminal history record information.

(b) Persons incarcerated in correctional facilities and institutions may authorize a correctional employee to obtain a copy of their criminal history record information for the purpose of review, challenge and appeal.

Section 602. Procedure.

(a) The Attorney General in cooperation with appropriate criminal justice agencies shall promulgate rules and regulations to implement this section and shall establish reasonable fees.

(b) Any individual requesting to review his or her own criminal history record information shall submit proper identification to the criminal justice agency which maintains his or her record. Proper identification shall be determined by the officials of the repository where the request is made. If criminal history record information exists the individual may review a copy of such information without undue delay for the purpose of review and challenge.

(c) The individual may challenge the accuracy of his or her criminal history record information by specifying which portion of the record is

[1] "Privacy and Security Council," in original.

incorrect and what the correct version should be. Failure to challenge any portion of the record in existence at that time will place the burden of proving the inaccuracy of any part subsequently challenged upon the individual. Information subsequently added to such record shall also be subject to review, challenge, correction or appeal.

(d) All criminal justice agencies shall have 60 days to conduct a review of any challenge and shall have the burden of proving the accuracy of the record. If the challenge is deemed valid, the appropriate officials must ensure that:

(1) The criminal history record information is corrected.

(2) A certified and corrected copy of the criminal history record information is provided to the individual.

(3) Prior erroneous criminal history record information disseminated to criminal justice agencies shall be destroyed or returned and replaced with corrected information.

(4) The individual is supplied with the names of those noncriminal justice agencies and individuals which have received erroneous criminal history record information.

(e) (1) If the challenge is ruled invalid, an individual has the right to appeal the decision to the Attorney General within 30 days of notification of the decision by the criminal justice agency.

(2) The Attorney General shall have the authority to conduct administrative appeal hearings in accordance with the "Administrative Agency Law."

(3) The decision of the Attorney General may be appealed to the Commonwealth Court by an aggrieved individual.

Section 603. Individual rights on access and review.

Any individual exercising his or her right to access and review under the provisions of this chapter, shall be informed when criminal history record information is made available that he or she is under no obligation to divulge such information to any person or agency.

CHAPTER 7
RESPONSIBILITY OF ATTORNEY GENERAL

Section 701. Duties of the Attorney General.

The Attorney General shall have the power and authority to:

(1) Establish rules and regulations for criminal history record information with respect to security, completeness, accuracy, individual access and review, quality control and audits of repositories.

(2) Establish a uniform schedule of reasonable fees for the costs of reproducing criminal history record information for individual access and review and for research or statistical purposes and access by noncriminal justice agencies.

(3) Make investigations concerning all matters touching the administration and enforcement of this act and the rules and regulations promulgated thereunder.

MICROFILMED FROM BEST AVAILABLE COPY

(4) Institute civil and criminal proceedings for violations of this act and the rules and regulations adopted thereunder.

(5) Conduct annual audits of the central repository and of a representative sample of all repositories within the Commonwealth, collecting, compiling, maintaining and disseminating criminal history record information.

(6) Appoint such employees and agents as it may deem necessary.

CHAPTER 8
PUBLIC NOTICE

Section 801. Requirements of repositories relating to public notice.

Repositories maintaining criminal history record information shall inform the public and post in a public place, notice of the existence, purpose, use and accessibility of the criminal history record information they maintain and the requirements of the repository for identification on individual access and review.

CHAPTER 9
SANCTIONS

Section 901. General administrative sanctions.

Any person, including any agency or organization, who violates the provisions of this act or any regulations or rules promulgated under it may:

(1) Be denied access to specified criminal history record information for such period of time as the Attorney General deems appropriate.

(2) Be subject to civil or criminal penalties or other remedies as provided for in this act.

(3) In the case of an employee of any agency who violates any provision of this act may be administratively disciplined by discharge, suspension, reduction in grade, transfer or other formal disciplinary action as the agency deems appropriate.

Section 902. Criminal penalties.

A person employed by a government agency commits a misdemeanor of the third degree, if such person:

(1) knowingly requests, obtains or seeks to obtain criminal history record information in violation of this act; or

(2) disseminates, maintains or uses criminal history record information knowing such dissemination, maintenance or use to be in violation of this act.

Section 903. Civil actions.

(a) The Attorney General, or any other individual or agency may institute an action in a court of proper jurisdiction against any person, agency or organization to enjoin any criminal justice agency, noncriminal justice agency, organization or individual violating the provisions of this act or to compel such agency, organization or person to comply with the provisions of this act.

(b) (1) Any person aggrieved by a violation of the provisions of this act or of the rules and regulations promulgated hereunder, shall have the substantive right to bring an action for damages by reason of such violation in a court of competent jurisdiction.

(2) A person found, by the court, to have been aggrieved by a violation of this act or the rules or regulations promulgated hereunder, shall be entitled to actual and real damages of not less than $100 for each violation and to reasonable costs of litigation and attorney's fees. Exemplary and punitive damages of not less than $1,000 nor more than $10,000 shall be imposed for any violation of this act, or the rules or regulations adopted hereunder, found to be willful.

CHAPTER 10
EFFECTIVE DATE AND REPEALER

Section 1001. Repealer.

All acts and parts of acts are repealed insofar as they are inconsistent herewith.

Section 1002. Effective date.

(a) This act shall take effect on July 1, 1979.

(b) Required expungement provision in section 302(a)(1) is not applicable to criminal proceedings initiated or completed prior to the effective date of this act unless requested by the individual as provided in Chapter 6.

APPROVED—The 26th day of November, A. D. 1978.

MILTON J. SHAPP

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority			
2. Privacy and Security			
3. Dissemination Regulations			
4. Inspection			
5. Challenge			
6. Judicial Review			
7. Purge: Non-Conviction			
8. Purge: Conviction	24-2404 34-1731	X X	
9. Seal: Non-Conviction			
10. Seal: Conviction	24-2404	X	
11. Remove Disqualification	24-2404	X	
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete	24-2518	X	
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty			
18. Public Records			
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security			
23. Transaction Logs			
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

d736140 R-00

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority			
2. Privacy and Security			
3. Dissemination Regulations			
4. Inspection			
5. Challenge			
6. Judicial Review			
7. Purge: Non-Conviction	12-1-12	X	
8. Purge: Conviction	12-1-13	X	
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification	12-1-13	X	
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete	12-1-10	X	
15. Dedicate			
16. Civil Remedy	12-1-12	X	
17. Criminal Penalty			
18. Public Records			
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security			
23. Transaction Logs			
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

RHODE HS-END

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	73.20	X	
2. Privacy and Security			
3. Dissemination Regulations	23-3-140 73-23	X X	
4. Inspection	73-24	X	
5. Challenge	73-24	X	
6. Judicial Review			
7. Purge: Non-Conviction	17-1-40	X	
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete	23-1-90 23-3-40 73-22 73-30	X X X X	
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty	23-1-90 31-1-140	X X	
18. Public Records	30-1-10 30-3-20	X X	
19. Separate Files	73.21	X	
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security	73-21 73-23	X X	
23. Transaction Logs	73-22	X	
24. Train Employees	23-23-10	X	
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

SOURCE DOCUMENT

4/71

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority			
2. Privacy and Security			
3. Dissemination Regulations	23-6-14 23-5-7 Reg. 2:02:03:06	X X	X
4. Inspection	23-6-11 Reg. 2:02:03:01	X	X
5. Challenge	Reg. 2:02:03:02		X
6. Judicial Review	Reg. 2:02:03:02		X
7. Purge: Non-Conviction			
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction	39-17-114	X	
11. Remove Disqualification	39-17-114	X	
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete	23-5-8 23-5-4 Reg. 2:02:02:01	X X	X
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty	25-4-3 23-6-18	X X	
18. Public Records	1-27-1	X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security			
23. Transaction Logs	Reg. 2:02:03:04		X
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ	1-27-1	X	
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

ARTICLE 2:02

BUREAU OF CRIMINAL STATISTICS

CHAPTER

2:02:01 Definitions
2:02:02 Completeness and Accuracy of Records
2:02:03 Access and Review
2:02:04 General Reporting Requirements
2:02:05 General Administrative Procedures

CHAPTER 2:02:01

DEFINITIONS

Section

2:02:01:01 Definitions
2:02:01:02 Scope of Applicability

2:02:01:01. Definitions. Words used in Chapter 2:02, unless the context plainly requires otherwise, mean:

(1) "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system;

(2) "Criminal Justice Agency" means a governmental agency or subunit which performs any of the following activities: collection and dissemination of criminal history records information, detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of persons accused of or convicted of a criminal offense.

(3) "Director" means the director of the bureau of criminal statistics as defined in SDCL 23-6-2;

(4) "State registry" means the registry of criminal history record information maintained pursuant to Section 23-3-16 and Chapters 23-5 and 23-6 of the South Dakota Codified Laws.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7) Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

2:02:01:02. Scope of Applicability. The rules in Article 2:02 apply only to the criminal history record information kept in the state registry by the division of criminal investigation pursuant to Section 23-3-16 and Chapters 23-5 and 23-6 of the South Dakota Codified Laws.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7) Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

CHAPTER 2:02:02

COMPLETENESS AND ACCURACY OF RECORDS

Section

2:02:02:01 Completeness and Accuracy of Records
2:02:02:02 Retroactive Applicability
2:02:02:03 External Audit Procedure
2:02:02:04 Internal Audit Procedures
2:02:02:05 Records Required to Facilitate Audit

2:02:02:01 Completeness and Accuracy of Records. Criminal history record information maintained in the state registry shall be complete and accurate and if the registry contains information that an individual has been arrested, the registry shall also include information of any disposition in South Dakota which has occurred in regard to the particular case and individual, within ninety (90) days after the disposition has occurred.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7) Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

2:02:02:02. Retroactive Applicability. Rule 2:02:01 shall apply to all arrests made after March 19, 1976.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7) Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

2:02:02:03. External Audit Procedure. Local criminal justice agencies making inquiries of the state registry of criminal history records are authorized to make periodic inquiries of the state registry for current disposition records to insure that the current disposition information required by rule 2:02:02:01 is entered on the state's registry files.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7) Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2 23-6-4 through 23-6-6 inclusive.

2:02:02:04. Internal Audit Procedures. At least once every year, the director shall select a representative sample of files in the state registry and audit such files to insure compliance with the provisions of 41 Federal Register 11714.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7) Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

2:02:02:05. Records Required to Facilitate Audit. To facilitate the audit provided by rules 2:02:02:03 and 2:02:02:04, the state registry shall maintain records which show the date on which criminal history record information is received by the state registry and, if such information is disseminated to someone other than a state, local or federal repository of criminal history record information, the date of the release of such information and the identity of the person or agency to whom it is released.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7) Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

CHAPTER 2:02:02:03

ACCESS AND REVIEW

Section

2:02:03:01 Access and Review
2:02:03:02 Requests for Corrections in Record
2:02:03:03 Request for Dissemination of Information
2:02:03:04 Notification of Agencies Receiving Information
2:02:03:05 Limitation on Access and Review of Criminal Record Information
2:02:03:06 Specific Agencies Authorized Access to Registry Information

2:02:03:01. Access and Review. Any individual shall have the right to review his or her criminal history record information file maintained in the state registry and to obtain a copy of the same at his or her expense. Review of criminal history record information under this rule shall be available only upon verification of the identity of the individual and at times which do not place an undue burden on the state registry.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7) Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

2:02:03:02. Requests for corrections in record. If an individual finds material in his criminal record history information file in the state registry which he believes to be incorrect or incomplete, he may request that the necessary corrections be made in his record file. If the state registry refuses to make the requested changes, individuals shall be entitled to appeal the decision under the provisions of SDCL 1-26-30.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7) Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

2:02:03:03. Request for Dissemination of Information. Upon request, an individual whose record has been corrected pursuant to rule 2:02:03:02, shall be given the names of all non-criminal justice agencies, if any, to whom the data has been given.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7) Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1 (7) Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

2:02:03:04. Notification of Agencies Receiving Information. If an individual's record is corrected under the provisions of rule 2:02:03:02, the state registry will notify all criminal justice agencies of the corrected information.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7) Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1 (7) Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

2:02:03:05. Limitation on Access and Review of Criminal Record Information. An individual's right to access and review of his or her criminal history record information, shall not extend to data contained in intelligence, investigatory or other related files, and shll not be construed to include any other information than criminal history record information as defined in rule 2:02:01:01.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7) Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1 (7) Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive.

2:02:03:06. Specific Agencies Authorized Access to Registry Information. Pursuant to SDCL 23-6-14, and without being limited to the following, the director specifically authorizes access to information in the state registry to the following, for official purposes to:

1. The Governor of the State of South Dakota.

2. Criminal Justice Agencies for the Administration of Criminal Justice.
3. Criminal Justice Agencies for the purpose of criminal justice agency employment.
4. Federal agencies where required by federal statute or federal executive order for security clearance, employment or international travel.
5. Pursuant to court orders.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1(7) Law Implemented SDCL 23-5-1, 23-5-2, 23-6-2, 23-6-4 through 23-6-6 inclusive and 23-6-14.

CHAPTER 2:02:04

GENERAL REPORTING REQUIREMENTS

Section
2:02:04:01 Reporting Deadline for Criminal History Records Information
2:02:04:02 Reporting Deadline for Criminal Records History Information on Repeat Offenders
2:02:04:03 Consequences of Noncompliance

2:02:04:01. Reporting Deadline for Criminal History Records Information. All agencies required to report criminal history record information to the state registry shall submit the information to the state registry within ten working days of the availability of the information to them.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1 (7) Law Implemented SDCL 23-5-1, 23-5-2, 23-6-4 through 23-6-6 inclusive.

2:02:04:02. Reporting Deadline for Criminal Records History Information on Repeat Offenders. All agencies required to report criminal history records information to the state registry shall report all information relating to persons having their fourth felony arrest or second felony conviction within forty-eight hours of the informaiton being available to them.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1 (7) Law Implemented SDCL 23-5-1, 23-5-2, 23-6-4 through 23-6-6 inclusive.

2:02:04:03. Conseuqences of Noncompliance. Failure to comply with rules 2:02:04:01 and 2:02:04:02 will make an agency requesting information from the state registry ineligible to receive any information from the state registry or assistance from the firector until the submission of all required criminal history records information is completed according to the rules in ARSD Article 2:02.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1 (7) Law Implemented SDCL 23-5-1, 23-5-2, 23-6-4 through 23-6-6 inclusive.

CHAPTER 2:02:05

GENERAL ADMINISTRATIVE PROCEDURES

Section
2:02:05:01 Requests for Declaratory Rulings

2:02:05:01 Requests for Declaratory Rulings. Petitions may be filed with the director for the purpose of requesting a declaratory ruling as to the applicability of any statutory provision or rule included within the scope of Article 2:02 or any final order of the director to a given set of facts included under Article 2:02. The petition shall be in writing and contain all pertinent facts necessary to inform the director of the nature of the problem on which a ruling is requested. The director may request more facts where necessary upon which to make his ruling.

General Authority SDCL 23-5-1, 23-5-2, 23-6-2, and 1-26-1 (7) Law Implemented SDCL 23-5-1, 23-5-2, 23-6-4 through 23-6-6 inclusive.

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	38-1001 E.O. 9	X X	
2. Privacy and Security			
3. Dissemination Regulations			
4. Inspection	Reg.	X	
5. Challenge	Reg.	X	
6. Judicial Review			
7. Purge: Non-Conviction			
8. Purge: Conviction	40-4001	X	
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete	38-503	X	
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty	15-306 40-4004	X X	
18. Public Records	15-304 15-401	X X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination	15-305	X	
22. Security			
23. Transaction Logs			
24. Train Employees	38-1101	X	
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority			
2. Privacy and Security			
3. Dissemination Regulations			
4. Inspection			
5. Challenge			
6. Judicial Review			
7. Purge: Non-Conviction	SB374(55)		X
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record	SB374-(55.03)		X
13. Research Access			
14. Accurate & Complete			
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty	SB374-(55.04)		X
18. Public Records			
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security			
23. Transaction Logs			
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ	3(3),8	X	

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

8 8 X 0 1

BLANK PAGE

By: Schwartz (Nabers) S.B. No. 374

A BILL TO BE ENTITLED

AN ACT

relating to expunction of criminal records; setting certain fees; amending Chapter 55, Code of Criminal Procedure, 1965, as amended; and amending Chapter 53, Code of Criminal Procedure, 1965, as amended, by adding Article 53.08.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 55, Code of Criminal Procedure, 1965, as amended, is amended to read as follows:

"Article 55.01. Right to Expunction

"A person who has been arrested for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if each of the following conditions exist:

"(1) an indictment or information charging him with commission of a felony has not been presented against him for an offense arising out of the transaction for which he was arrested;

"(2) he has been released and the charge, if any, is no longer pending and there was no court ordered supervision under Article 42.13, Code of Criminal Procedure, 1965, as amended, nor a conditional discharge under Section 4.12 of the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes) [has been dismissed]; and

"(3) he has not been convicted of a felony in the five years preceding the date of the arrest.

"Article 55.02. Procedure for Expunction

S.B. No. 374

"Section 1. (a) A person who is entitled to expunction of records and files under this chapter may file an ex parte [a] petition for expunction in a district court for the county in which he was arrested.

"(b) The petitioner shall include in the petition a list of all law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and any other officials or agencies or other entities of this state or of any political subdivision of this state and of all central federal depositories of criminal records that the petitioner has reason to believe have records or files that are subject to expunction.

"Section 2. The court shall set a hearing on the matter no sooner than thirty days from the filing of the petition and shall give reasonable notice of the hearing to each official or agency or other entity named in the petition by certified mail, return receipt requested, and such entity may be represented by the attorney responsible for providing such agency with legal representation in other matters.

"Section 3. (a) If the court finds that the petitioner is entitled to expunction of any records and files that are the subject of the petition, it shall enter an order directing expunction and directing any state agency that sent information concerning the arrest to a central federal depository to request such depository to return all records and files subject to the order of expunction. Any petitioner or agency protesting the

expunction may appeal the court's decision in the same manner as in other civil cases. When the order of expunction is final, the [The] clerk of the court shall send a certified copy of the order by certified mail, return receipt requested, to each official or agency or other entity of this state or of any political subdivision of this state named in the petition that there is reason to believe has any records or files that are subject to the order. The clerk shall also send a certified copy by certified mail, return receipt requested, of the order to any central federal depository of criminal records that there is reason to believe has any of the records, together with an explanation of the effect of the order and a request that the records in possession of the depository, including any information with respect to the proceeding under this article, be destroyed or returned to the court.

"(b) All returned receipts received by the clerk from notices of the hearing and copies of the order shall be maintained in the file on the proceedings under this chapter.

"Section 4. (a) If the state establishes that the petitioner is still subject to conviction for an offense arising out of the transaction for which he was arrested because the statute of limitations has not run and there is reasonable cause to believe that the state may proceed against him for the offense, the court may provide in its order that the law enforcement agency and the prosecuting attorney responsible for investigating the offense may retain any records and files that are necessary to the

MICROFILMED FROM BEST AVAILABLE COPY

investigation.

"(b) Unless the petitioner is again arrested for or charged with an offense arising out of the transaction for which he was arrested, the provisions of Articles 55.03 and 55.04 of this code apply to files and records retained under this section.

"Section 5. (a) On receipt of the order, each official or agency or other entity named in the order shall:

"(1) return all records and files that are subject to the expunction order to the court or, if removal is impracticable, obliterate all portions of the record or file that identify the petitioner and notify the court of its action; and

"(2) delete from its public records all index references to the records and files that are subject to the expunction order.

"(b) The court may give the petitioner all records and files returned to it pursuant to its order.

"(c) If an order of expunction is issued under this article, the court records concerning the expunction proceeding are not open for inspection by anyone except the petitioner unless the order permits retention of a record under Section 4 of this article and the petitioner is again arrested for or charged with an offense arising out of the transaction for which he was arrested. <u>The clerk of the court issuing the order shall obliterate all public references to the proceeding and maintain the files or other records in an area not open to inspection.</u>

"Article 55.03. Effect of Expunction

"After entry of an expunction order:

"(1) the release, dissemination, or use of the expunged records and files for any purpose is prohibited;

"(2) except as provided in Subdivision 3 of this article, the petitioner may deny the occurrence of the arrest and the existence of the expunction order; and

"(3) the petitioner or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

"Article 55.04. Violation of Expunction Order

"Section 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state or any political subdivision of the state and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

"Section 2. A person who knowingly fails to return or to obliterate identifying portions of a record or file ordered expunged under this chapter commits an offense.

"Section 3. An offense under this article is a Class B misdemeanor.

"Article 55.05. Notice of Right to Expunction

"On release or discharge of an arrested person, the person responsible for the release or discharge shall give him a written explanation of his rights under this chapter and a copy of the provisions of this chapter."

MICROFILMED FROM BEST AVAILABLE COPY

S.B. No. 374

SECTION 2. Chapter 53, Code of Criminal Procedure, 1965, as amended, is amended by adding Article 53.08 to read as follows:

"Article 53.08. Fees in Proceedings for Expunction of Criminal Records

"The following fees shall be taxed against the petitioner seeking expunction of a criminal record:

"(1) the fee charged for filing ex parte petitions in other civil actions in district court;

"(2) $1.00 plus postage for each certified mailing of notice of the hearing date;

"(3) $2.00 plus postage for each certified mailing of certified copies of the order of expunction."

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

S.B. No. 374

COMMITTEE AMENDMENT NO. 1

Amend S.B. 374 as follows: -

At line 17, Page 1, insert after the second comma and before the word "is" the words "has not resulted in a final conviction and," to make Subdivision (2) read: "(2) he has been released and the charge, if any, has not resulted in a final conviction and is no longer pending and there was no court ordered supervision under Article 42.13, Code of Criminal Procedure, 1965, as amended, nor a conditional discharge under Section 4.12 of the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes) ~~(has been dismissed)~~; and

Nabers

COMMITTEE AMENDMENT NO. 2

Amend S.B. 374 as follows:

At line 26, page 2, and lines 1 and 2, page 3, delete the sentence "Any petitioner or agency protesting the expunction may appeal the court's decision in the same manner as in other civil cases."

After line 24, page 4, insert the following:

Sec. 6. The petitioner may appeal the court's denial of an expunction order as to all or some of the records and files stated in the petition. An official, agency, or other entity named in the petition may appeal an expunction order, and an expunction order is suspended until the judgment of the court of criminal appeals is received by the court. The court of criminal appeals has jurisdiction to determine whether the trial court erred in issuing or denying an expunction order.

Nabers

MICROFILMED FROM BEST AVAILABLE COPY

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	77-59-3	X	
2. Privacy and Security			
3. Dissemination Regulations	63-50-7 Reg.	X	X
4. Inspection	63-50-7 78-26-2 Reg.	X X	X
5. Challenge	63-50-7 Reg.	X	X
6. Judicial Review	63-50-7 Reg.	X	X
7. Purge: Non-Conviction	77-35-17.5	X	
8. Purge: Conviction	77-35-17.5	X	
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record	77-35-17.5	X	
13. Research Access			
14. Accurate & Complete	63-50-6 Reg.	X	X
15. Dedicate			
16. Civil Remedy	63-50-8	X	
17. Criminal Penalty	63-50-9	X	
18. Public Records	63.50-10	X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security	63-50-6	X	
23. Transaction Logs			
24. Train Employees			
25. List Systems	63-50-5	X	
26. F.O.I. Including CJ	63-50	X	
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

UTAH INFORMATION PRACTICES ACT RULES & REGULATIONS

1. PURPOSE

It is the purpose of these rules and regulations to provide for and assist in the implementation of the Utah Information Practices Act which establishes fair information practices to insure that the rights of persons are protected and remedies established to prevent the abuse of personal information.

2. PRINCIPLES

(1) There shall be no secret personal information system maintained by any agency or person subject to the Information Practices Act and these Rules and Regulations.

(2) State agencies shall collect only that personal information appropriate and relevent to agency program operation, and then, only when authorized by the lawful policy forming board of that agency, or as authorized by law, executive order or federal requirements.

(3) Information shall be obtained by legal means only.

(4) Inaccurate information should not be used.

(5) Any agency collecting, maintaining, using or disseminating personal information should both assure the reliability and take precautions to prevent the abuse or misuse of such information.

(6) There shall be an established procedure whereby an individual may learn of the existence of information collected about him, the purpose for which such information has been collected, the use and dissemination of such information, and an individual shall further, have the right to examine such information collected about him.

(7) There shall be an established procedure for an individual to reque correction, erasure amendment of inaccurate, obsolete or irrelevent

information maintained about the individual.

(8) There shall be an established procedure whereby an individual may seek to prevent personal information collected for the original purpose from being used for other purposes without said individuals consent.

(9) All personnel having access to personal information data shall observe the highest standards of conduct relative to the confidentiality of such information.

3. DEFINITIONS

As used in these rules:

(1) The term "INFORMATION SYSTEM", means the total components and operations of a recordkeeping process, whether automated or manual, containing personal information and the name, personnel number, or other identifying particulars;

(2) The term "PERSONAL INFORMATION", means all information that describes, locates, or indexes anything about an individual including his education, financial transactions, medical history, criminal, or employment records. or that affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, and the record of his presence, registration, or membership in an organization or activity, or admission to an institution;.

(3) The term "DATA SUBJECT", means an individual about whom personal information is described, indexed, or may be located under his name, personnel number, or other identifiable particulars, in an information system;

(4) The term "DISSEMINATE", means to release, transfer, or otherwise communicate information by whatever means.

(5) The term, "AGENCY OR STATE AGENCY", means any Department, Division, Bureau, Commission, Council, Institution, Authority or other unit

however designated, of the State of Utah.

(6) The term "PURGE", means to obliterate information completely from the transient, permanent, or archival records of a state agency.

(7) The term "SECRETARY", means the Lt. Governor/Secretary of State;

(8) The term "DATA ON INDIVIDUALS", includes all records, files and processes which contain any data on any individual and which are kept or intended to be kept by state government on a permanent or semi-permanent basis, including but not limited to, that data by which it is possible to identify with reasonable certainty the person to whom such information pertains;

(9) The term "RESPONSIBLE AUTHORITY", means any state office or state official established by law or executive order as the body responsible for the collection or use of any set of data on individuals or summary data;

(10) The term "PROPER PURPOSE", means the purpose for which information is collected or used shall be in accordance with laws and regulations governing the user and shall conform to those purposes as filed with the Secretary.

(11) The term "SUMMARY DATA", means statistical records and reports derived from data on individuals but in which individuals are not identified and from which neither their identities nor any other characteristic that could specifically identify an individual is ascertainable;

(12) The term "ROUTINE USE", means the use of personal information for a purpose which is compatible with the purpose for which it was collected.

(13) The term "NEED TO KNOW", means the necessity of knowing, due to agency needs or functions, and pursuant to law regulation of a person or an agency who must collect, use, maintain or disseminate personal information for obtaining the specific information.

(14) The term "INDIVIDUAL", means a natural person. In the case of a minor individual under the age of 13 or those persons mentally or physically

MICROFILMED FROM BEST AVAILABLE COPY

incapacitated, "individual" shall mean a parent or guardian acting in a representative capacity.

(15) The term "PUBLIC DATA", means personal information collected and maintained by state government which, in the opinion of the state records committee, should be open to the public.

(16) The term "CONFIDENTIAL DATA", means personal information collected and maintained by state government which is (a) classified confidential by law, (b) collected by an agency as part of an active investigation undertaken for the purpose of the commencement of a legal or administrative action provided that the burden of proof as to whether such investigation is active or in anticipation of a legal or administrative action is upon the agency, (c) declared confidential by the state records committee, this confidential data shall be available only to appropriate agencies for uses specified to the Secretary. This confidential data shall also be available to others on a need to know basis, including only, the data subjects designated physician or other health professional or legal counsel, provided that the data subject has authorized such in writing, but in no case shall it be given to the individual.

(17) The term,"PRIVATE DATA", means personal information collected and maintained by state government which, in the opinion of the state records committee, should be available only to the appropriate agencies for the uses specified, and to others by the express consent of the individual, and to the individual himself or next of kin when information is needed to acquire benefits due a deceased person.

4. ADMINISTRATIVE REQUIREMENTS

Any state agency maintaining an information system that includes personal information shall:

(1) Collect, maintain, use, and disseminate only that personal information

data that is relevant and necessary to accomplish the stated proper purposes of the agency, as authorized by lawful policy forming board of that agency, by law, executive order, or federal requirements.

(2) Collect information to the extent possible, from the data subject directly.

(3) Collect no personal information concerning the political or religious beliefs, affiliations, and activities of data subjects which is to be maintained, used of disseminated in or by any information system operated by any agency, unless it be given voluntarily.

(4) Establish rules of conduct and take affirmative action to inform agency personnel and those contracted individuals who are involved in the operation, or maintenance of the system, or the collection, maintenance use, or dissemination of any personal information contained therein, about the requirements of this act, the rules of conduct, and the penalties for noncompliance;

(5) Determine in conjunction with State Archivist, the retention time for data. The data shall be destroyed in accordance with Utah Code 63-2-69.

(6) Inform each individual, either the data subject or others, supplying information about data subject:

   a. Whether the disclosure of such information is mandatory or voluntary.

   b. The principle purposes for which the information is intended to be used.

   c. The effects on the individual, of not providing all or any part of the requested information.

(7) Allow persons contributing personal information about another individual for record, at their own request, to have their names or identity classified confidential and withheld from the individual.

MICROFILMED FROM BEST AVAILABLE COPY

(8) When an agency provides by contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of the Utah Information Practices Act and the Rules and Regulations set forth herein to be applied to such system.

(9) Allow the use of summary data derived from personal information under the jurisdiction of one or more responsible authorities provided that the responsible authority shall prepare summary data from data on individuals upon request of any person, provided the request is in writing stating the intended use and the cost is borne by the requesting person. The responsible authority may delegate the power to prepare summary data to the administrative officer responsible for any central repository of data.

PRIVACY SAFEGUARDS

5. Any agency maintaining an information system that includes confidential or private information shall:

(1) Establish appropriate adminstrative, technical and physical safeguards to insure the security and confidentiality of records. Plans for safeguarding of data shall be submitted for approval to the State Records Committee.

(2) Conspicuously show the classification of all forms or films used for confidential personal information data on top or bottom of the forms or films. Forms or films containing private information data may also be marked. If form or film does not have adequate room for classification to be shown, a statement of classification shall accompany form or film indicating the classification and signed by the responsible authority.

(3) Stamp or mark with appropriate classification on the top of each page all correspondence or reports that contain confidential

personal information data.

(4) On rolls of microfilm or on microfiche containing confidential or private personal information data show the classification at the beginning and end of the film in letters large enough to read without mechanical means. The classification shall also be shown on the certificate of the custodian of the records which is photographed at the beginning and end of a roll of microfilm.

(5) Store classified microfilms or microfiche in red cartons or have the classification stamped on the label:

(6) Not release original records or record copies thereof, from the custody of the responsible authority, except for those records being transferred to the State Archives.

6. USE - DISSEMINATION

Any agency maintaining an information system that includes confidential or private information shall:

(1) Restrict access to confidential and private data to those with a "Need to Know", consistent with proper used of the data.

(2) In an emergency, allow access to private or confidential data by a person persuant to showing compelling circumstances affecting the health or safety of the data subject, if upon such disclosure, notification is transmitted to the last known address of the data subject.

(3) Review any personal information data before it is used or disseminated to be sure it is accurate, complete and as current as possible inorder to reduce possibilities of injury to the data subject by the use of erroneous data, properly disposing of all inaccurate information.

(4) Provide adequate security for all data transmitted by whatever means to insure its content from unauthorized use.

(5) Not use any confidential or private personal information data for other than routine agency functions or purposes without the written

MICROFILMED FROM BEST AVAILABLE COPY

consent of the individual, except that next of kin may obtain information from private data when needed to acquire benefits due a deceased person.

(5) Not sell or rent an individual's name and address unless such action is specifically authorized by law. This provision shall not be construed to require withholding of names and addresses otherwise permitted to be made public.

(7) Assure that when demands for personal information data from the system are made by compulsory legal means, a reasonable effort is made to serve notice of such demands on the data subject.

(8) Wherever possible, divide information into separate portions inorder that it may classify the portions as public, private or confidential and thereby make more of the information available to the data subjects.

(9) Assume responsibility for use, dissemination and safeguarding of any personal information data including that acquired from another agency. Data transferred to record storage areas such as computor service or archives shall be adequately safeguarded in such storage areas but shall be used or disseminated through the responsible agency only.

(10) When an individual is admitted as a patient, obtain written permission from the individual before divulging, to other than staff members, the fact that the individual has been admitted.

(11) Each record pertaining to an individual which was or is transferred to the State Archives of the State of Utah or the Archive Departments of the State Colleges or Universities as a record which has sufficient historical or other value to warrant its continued preservation by the State of Utah shall for the purpose of these rules and regulations be considered to be maintained by the State Archives.

RIGHT TO REVIEW

(1) An individual may make a request either to the Secretary or to a particular state agency, submitting the request on a form IPA-1 or

IPA-2, asking that he be informed if he is the subject of any personal information data maintained by the state government or that particular agency, the classification of the data, and where it may be reviewed. If an individual desires to review any public or private personal information data on himself he must contact, in person, the agency maintaining the data. Upon making a request, in person to the responsible authority of that agency, an individual, properly identified, shall be shown the data in a form comprehensible to the normal person, at no charge to him and if he desires, be informed of the content, meaning, purpose and need of the data.

(2) An agency shall make disclosures to individuals required under these rules and regulations during normal business hours.

(3) If the personal data requested by the data subject is of a medical or psychological nature the responsible authority may elect to not provide access to the data subject, but in lieu thereof, may send copies to a physician or other health professional as designated by the data subject in writing. The data subject will then be notified when the data has been sent.

(4) If a data subject requests copies of the information shown to him a reasonable fee may be charged for these copies.

(5) The responsible authority shall charge an appropriate fee, but not to exceed actual cost for making disclosures, for any additional requests by the data subject within a six month period unless requested information is in dispute.

8. RIGHT TO CONTEST

If the data subject gives notice that he wishes to challenge the accuracy or completeness of the personal information data about himself the following procedures should be followed:

(1) The data subject shall notify in writing, the responsible authority of

MICROFILMED FROM BEST

the nature of the disagreement. Within 30 days from the receipt of the notice the responsible authority shall, using agency administrative procedures, review the data and if it is found to be inaccurate or incomplete, make the necessary corrections, or, if it is found to be no longer needed, purge that data and notify the data subject of actions. The responsible authority shall, within the 30 days, notify past recipients of the data to the extent to which they are reasonably ascertainable of the data correction.

(2) In the event the responsible authority, after investigation of the data, does not agree with the data subjects written protest, the individual shall be so notified in writing.

(3) Data in dispute shall not be disclosed except under conditions required by law or regulation and even then only if the data subjects statement of disagreement is included with the disclosed data.

9. RIGHT TO APPEAL

(1) In the event the data subject is aggrieved by the determination of the responsible authority to whom he has protested, he may appeal that determination to the Secretary in writing.

(2) The Secretary shall within 30 days of the receipt of notice of appeal, hold a hearing on the contested data. At this hearing the Secretary shall have the responsible authority and the personal information data in question. The data subject who appealed shall also be at the hearing and may be represented by counsel and may have witnesses testify on his behalf.

(3) At the hearing the Secretary shall decide if the data subject's personal information data file should remain as is or if it should be corrected.

(4) If the data subject is not satisfied with the decision of the Secretary

he may then bring appropriate court action pursuant to section 63-46-9. of the Utah Code, Annotated 1953.

(5) The agency maintaining the information system shall disclose to the individual his rights to challenge and appeal.

10. PUBLIC NOTICE REQUIREMENT

Any agency collecting, maintaining, using or disseminating private or confidential personal information data shall:

(1) Report the existence and character of each existing system each year on or before 1 September to the Secretary.

(2) Shall assure that the report, which shall be public information, made under this subsection specifies the following:

a. The name of the agency and address.

b. The responsible authority, title and address

c. The approximate number of persons on whom information is maintained

d. The purposes for which personal information is collected and used

e. The categories of information maintained

f. The access controls and safeguards

g. The categories of information sources

h. Provisions for maintaining the accuracy, completeness, pertinance of data and necessity for retaining it.

i. The agencies policies and practices regarding information storage, duration of retention and purging thereof.

j. A report on the number of individuals who have reviewed their own data files under provisions of the Information Practices Act.

11. ACTION ON REQUESTS

(1) Upon receipt of initial request from an individual for records check, form IPA-1 or IPA-2, the Secretary shall submit a request, form IPA-3 to state agencies for a check of their files to determine if public,

MICROFILMED FROM BEST AVAILABLE COPY

private or confidential information data is on file about the subject individual.

(2) Agency shall respond to the request returning the request form to the Secretary within 15 working days from date of receipt of such request

(3) When subject individual comes to an agency to review his data file, the responsible authority shall:

a. Check for proper identification of subject individual

b. If individual is accompanied by others, require subject individual to authorize in writing, form IPA-4, any review of his information file by other party.

c. Allow subject individual to review file in a form comprehensible to a normal person.

d. Inform subject individual of content, meaning, purpose and need of data.

e. Provide copies of data at a reasonable fee if so requested.

f. If subject individual challenges information, explain his right to contest and right to appeal

g. Upon completion of review, request the individual to complete the IPA-5 form.

h. Record any review of data file on an agency log using appropriate agency or Secretary log numbers as reference on all IPA forms used.

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	20-2051	X	
2. Privacy and Security	E.O. 31	X	
3. Dissemination Regulations	28-204 28-601	X X	
4. Inspection	1-318	X	
5. Challenge	1-318	X	
6. Judicial Review	1-318	X	
7. Purge: Non-Conviction			
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete			
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty			
18. Public Records			
19. Separate Files			
20. Intelligence Collection	1954 1955	X X	
21. Intelligence Dissemination	1954 1955	X X	
22. Security			
23. Transaction Logs			
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ	1-317	X	
27. F.O.I. Excluding CJ	1-317 28-601	X X	

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

203-04

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority			
2. Privacy and Security			
3. Dissemination Regulations			
4. Inspection			
5. Challenge			
6. Judicial Review			
7. Purge: Non-Conviction			
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete			
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty			
18. Public Records	3-881	X	
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security			
23. Transaction Logs			
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ	3-881(g)	X	
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	9-107.1 9-109 9-111.3,4	X X X	
2. Privacy and Security	9-109	X	
3. Dissemination Regulations	9-111.6,7 19.2-389 S.542, 19.2-389 S.750, 19.2-389 Reg. 4.0	X X	X X X
4. Inspection	9-111.11 Reg. 5.0	X	X
5. Challenge	9-111.11 Reg. 6.0-11.0	X	X
6. Judicial Review	9-111.11	X	
7. Purge: Non-Conviction	9-111.9	X	
8. Purge: Conviction	9-111.9	X	
9. Seal: Non-Conviction	19.2-392.2 9-111.9	X	X
10. Seal: Conviction	9-111.9	X	
11. Remove Disqualification			
12. Deny CJ Record			
13. Research Access	19.2-389	X	
14. Accurate & Complete	9-111.10 Reg. 3.0	X	X
15. Dedicate			
16. Civil Remedy	9-111.12	X	
17. Criminal Penalty	19.2-392.3 9-111.13	X	X
18. Public Records			
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security	9-111.10 Reg. 14.0-14.6	X	X
23. Transaction Logs	9-111.11 Reg. 11	X	X
24. Train Employees	Reg. 14.4		X
25. List Systems			
26. F.O.I. Including CJ	H1427,2.1-342 211-342	X	X
27. F.O.I. Excluding CJ	211-342 2.1-384	X X	

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

An Act to amend and reenact § 9-108.1 of the Code of Virginia, relating to criminal history record information.

[H 1572]

Be it enacted by the General Assembly of Virginia:

1. That § 9-108.1 of the Code of Virginia is amended and reenacted as follows:

§ 9-108.1. Definitions.–The following words, whenever used in this chapter, or in Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, shall have the following meanings, unless the context otherwise requires:

A. "Administration of criminal justice" means performance of any activity directly involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information.

B. "Criminal justice agency" means a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities but only to the extent that it does so.

C. "Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by ~~Chapter 8 (§ 16.1-139 et seq.)~~ *Chapter 11 (§ 16.1-226 et seq.)*, of Title 16.1, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

D. "Correctional status information" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

E. "Criminal justice information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

F. "Commission" means the Criminal Justice Services Commission.

G. "Dissemination" means any transfer of information, whether orally, in writing, or by electronic means. The term does not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and right to know the information.

H. "Law-enforcement officer" means any full-time employee of a police department or sheriff's office which is a part of or administered by the State or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this State, and shall include any member of the Enforcement or Inspection Division of the Alcoholic Beverage Control Commission vested with police authority.

I. "Conviction data" means information in the custody of any criminal justice agency relating to a judgment of conviction, and the consequences arising therefrom, in any court.

VIRGINIA

An Act to amend and reenact §§ 2.1-342 and 15.1-135.1 of the Code of Virginia, relating to the Freedom of Information Act and disclosure of certain arrest records.

[H 1427]

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-342 and 15.1-135.1 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-342. Official records to be open to inspection: procedure for requesting records and responding to request; charges; exceptions to application of chapter.—(a) Except as otherwise specifically provided by law, all official records shall be open to inspection and copying by any citizens of this State during the regular office hours of the custodian of such records. Access to such records shall not be denied to any such citizen of this State, nor to representatives of newspapers and magazines with circulation in this State, and representatives of radio and television stations broadcasting in or into this State; provided, that the custodian of such records shall take all necessary precautions for their preservation and safekeeping. Any public body covered under the provisions of this chapter shall make an initial response to citizens requesting records open to inspection within fourteen calendar days from the receipt of the request by the public body. Such citizen request shall designate the requested records with reasonable specificity. If the requested records or public body are excluded from the provisions of this chapter, the public body to which the request is directed shall within fourteen calendar days from the receipt of the request tender a written explanation as to why the records are not available to the requestor. Such explanation shall make specific reference to the applicable provisions of this chapter or other Code sections which make the requested records unavailable. In the event a determination of the availability of the requested records may not be made within the fourteen-calendar-day period, the public body to which the request is directed shall inform the requestor as such, and shall have an additional ten calendar days in which to make a determination of availability. A specific reference to this chapter by the requesting citizen in his records request shall not be necessary to invoke the time limits for response by the public body. The public body may make reasonable charges for the copying and search time expended in the supplying of such records; however, in no event shall such charges exceed the actual cost of the public body in supplying such records. Such charges for the supplying of requested records shall be estimated in advance at the request of the citizen.

(b) The following records are excluded from the provisions of this chapter:

(1) Memoranda, correspondence, evidence and complaints related to criminal investigations, reports submitted to the State and local police in confidence, and all records of persons imprisoned in a penal institution in this State provided such records relate to the said imprisonment *; provided, however, that information in the custody of law-enforcement officials relative to the identity of any individual other than a juvenile who is arrested and charged, and the status of the charge of arrest, shall not be excluded from the provisions of this chapter* .

(2) Confidential records of all investigations of applications for licenses and all licensees made by or submitted to the Alcoholic Beverage Control Board.

(3) State income tax returns, scholastic records and personnel records, except that such access shall not be denied to the person who is the subject thereof, and medical and mental records, except that such records can be personally reviewed by the subject person or a physician of the subject person's choice; provided, however, that the subject person's mental records may not be personally reviewed by such person when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being. Where the person who is the subject of scholastic or medical and mental records is under the age of eighteen, his right of access may be asserted only by his parent or guardian, except in instances where the person who is the subject thereof is an emancipated minor or a student in a State-supported institution of higher education.

(4) Memoranda, working papers and correspondence held or requested by members of the General Assembly or by the office of the Governor or Lieutenant Governor, Attorney General or the mayor or other chief executive officer of any political subdivision of the

State or the president or other chief executive officer of any State-supported institutions of higher education.

(5) Memoranda, working papers and records compiled specifically for use in litigation and material furnished in confidence with respect thereto.

(6) Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment, or (iii) receipt of an honor or honorary recognition.

(c) Neither any provision of this chapter nor any provision of Chapter 26 (§ 2.1-377 et seq.) of this title shall be construed as denying public access to records of the position, job classification, official salary or rate of pay of, and to records of the allowances or reimbursements for expenses paid to any public officer, official or employee at any level of State, local or regional government in this Commonwealth whatsoever; provided, however, that the provisions of this subsection shall not apply to records of the official salaries or rates of pay of public employees whose annual rate of pay is ten thousand dollars or less.

§ 15.1-135.1. Certain records to be kept by sheriffs and chiefs of police.—A. It shall be the duty of the sheriff or chief of police of every county, city, or town to insure, in addition to other records required by law, the maintenance of adequate personnel, arrest, investigative, reportable incidents, and noncriminal incidents records necessary for the efficient operation of a law-enforcement agency. Failure of a sheriff or a chief of police to maintain such records or failure to relinquish such records to his successor in office shall constitute a misdemeanor. Former sheriffs or chiefs of police shall be allowed access to such files for preparation of a defense in any suit or action arising from the performance of their official duties as sheriff or chief of police. The enforcement of this section shall be the duty of the attorney for the Commonwealth of the county or city wherein the violation occurs. *Except for information in the custody of law-enforcement officials relative to the identity of any individual other than a juvenile who is arrested and charged, and the status of the charge of arrest,* the records required to be maintained by this section shall be exempt from the provisions of Chapter 21 (§§ 2.1-340 to 2.1-346) of Title 2.1 of the Code of Virginia.

B. For purposes of this section, the following definitions shall apply:

1. "Personnel records" shall mean those records maintained on each and every individual employed by a law-enforcement agency which reflect personal data concerning the employee's age, length of service, amount of training, education, compensation level, and other pertinent personal information.

2. "Arrest records" shall mean a compilation of information, centrally maintained in law-enforcement custody, of any arrest or temporary detention of an individual, including the identity of the person arrested or detained, the nature of the arrest or detention, the charge, if any, and the final disposition or present status of each charge of arrest included in the record.

3. "Investigative records" shall mean the reports of any systematic inquiries or examinations into criminal or suspected criminal acts which have been committed, are being committed, or are about to be committed.

4. "Reportable incidents records" shall mean a compilation of complaints received by a law-enforcement agency and action taken by the agency in response thereto.

5. "Noncriminal incidents records" shall mean compilations of noncriminal occurrences of general interest to law-enforcement agencies, such as missing persons, lost and found property, suicides and accidental deaths.

VIRGINIA

An Act to amend and reenact § 19.2-389 of the Code of Virginia, relating to dissemination of criminal history record information.

[S 750]

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-389 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-389. Dissemination of criminal history record information.—A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to: (i) authorized officers or employees of criminal justice agencies, as defined by § 9-108.1, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants; (ii) such other individuals and agencies which require criminal history record information to implement a State or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements and/or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending; (iii) individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, insure the security and confidentiality of the data; (iv) individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency which shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and insure the confidentiality and security of the data; (v) agencies of State or federal government which are authorized by State or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information; and (vi) individuals and agencies where authorized by court order or court rule; (vii) agencies of any political subdivision of the State for the conduct of investigations of applicants for public employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, license under consideration; *(vii)(a) public or private agencies when and as required by federal or State law or interstate compact to investigate applicants for foster or adoptive parenthood subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or State authority or court as may be required to comply with an express requirement of law for such further dissemination;* (viii) to the extent permitted by federal law or regulation, public service companies as defined in § 56-1 of the Code of Virginia, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration; and (ix) the appropriate authority for purposes of granting citizenship and for purposes of international travel, including but not limited to, issuing visas and passports; (x) a person requesting a copy of his own conviction data as defined in § 9-108.1 I, at his costs; and (xi) as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case, and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgements, the Central Criminal Records Exchange or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; provided, however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of

MICROFILMED FROM BEST AVAILABLE COPY

such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to assure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.1-135.1.

An Act to amend and reenact § 19.2-389 of the Code of Virginia, relating to dissemination of criminal history record information.

[S 542]

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-389 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-389. Dissemination of criminal history record information.—A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to: (i) authorized officers or employees of criminal justice agencies, as defined by §9-108.1, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants; (ii) such other individuals and agencies which require criminal history record information to implement a State or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements and/or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending; (iii) individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, insure the security and confidentiality of the data; (iv) individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency which shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and insure the confidentiality and security of the data; (v) agencies of State or federal government which are authorized by State or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information; and (vi) individuals and agencies where authorized by court order or court rule; (vii) agencies of any political subdivision of the State for the conduct of investigations of applicants for public employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration; (viii) to the extent permitted by federal law or regulation, public service companies as defined in § 56-1 of the Code of Virginia, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when

past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration; and (ix) the appropriate authority for purposes of granting citizenship and for purposes of international travel, including but not limited to, issuing visas and passports; (x) a person requesting a copy of his own conviction data as defined in § 9-108.1 I, at his costs; and (xi) as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case, and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgements, the Central Criminal Records Exchange *or the criminal justice agency in cases of offenses not required to be reported to the Exchange,* shall furnish a copy of conviction data covering the person named in the request to the person making the request ~~, when the purpose for the dissemination of the conviction data is the gaining of employment by a prospective employee~~ ; provided, however, such person on whom the data is being obtained ~~must~~ *shall* consent in writing, *under oath,* to the making of such request. *A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect .*

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information *on offenses required to be reported to the Central Criminal Records Exchange* to assure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. *A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.1-135.1.*

MICROFILMED FROM BEST AVAILABLE COPY

CHAPTER 23.1.

EXPUNGEMENT OF CRIMINAL RECORDS.

Sec.
19.2-392.1. Statement of policy.
19.2-392.2. Expungement of police and court records.
19.2-392.3. Disclosure of expunged records.
19.2-392.4. Prohibited practices by employers, educational institutions, agencies, etc., of State and local governments.

§ 19.2-392.1. Statement of policy. — The General Assembly finds that arrest records can be a hindrance to an innocent citizen's ability to obtain employment, an education and to obtain credit. This chapter is intended to protect the innocent persons who are arrested from unwarranted damage which may occur as a result of being arrested. (1977, c. 675.)

Law Review. — For survey of Virginia criminal procedure for the year 1976-77, see 63 Va. L. Rev. 1408 (1977).

§ 19.2-392.2. Expungement of police and court records. — A. If a person is charged with the commission of a crime and

1. Is acquitted, or
2. A nolle prosequi is taken or the charge is otherwise dismissed,

he may file a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the charge.

B. The petition shall be filed in the circuit court of the county or city in which the case was disposed of by acquittal or being otherwise dismissed.

C. A copy of the petition shall be served on the Commonwealth's attorney of the city or county in which the petition is filed. The Commonwealth's attorney may file an objection or answer to the petition within twenty-one days after it is served on him.

D. *Hearing by court; granting or denial of expungement.* — The court shall conduct a hearing on the petition. If the court finds that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes or may cause circumstances which constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records relating to the charge. Otherwise, it shall deny the petition.

E. The Commonwealth shall be made party defendant to the proceeding. Any party aggrieved by the decision of the court may appeal, as provided by law in civil cases.

F. Upon the entry of an order of expungement, the petitioner may cause a copy of such order to be served upon the Criminal Justice Services Commission, which Commission shall, pursuant to rules and regulations adopted pursuant to

§ 9-111.9 of this Code, direct the manner by which the appropriate expungement or removal of such records which the court shall have ordered expunged.

G. Costs shall be as provided by § 14.1-113, but shall not be recoverable against the Commonwealth. (1977, c. 675.)

Law Review. — For survey of Virginia criminal procedure for the year 1976-77, see 63 Va. L. Rev. 1408 (1977).

§ 19.2-392.3. Disclosure of expunged records. — A. It shall be unlawful for any person having or acquiring access to an expunged court or police record to open or review it or to disclose to another person any information from it without an order from the court which ordered the record expunged.

B. Upon a verified petition filed by the Commonwealth's attorney alleging that the record is needed by a law-enforcement agency for purposes of employment application as an employee of a law-enforcement agency or for a pending criminal investigation and that the investigation will be jeopardized or that life or property will be endangered without immediate access to the record, the court may enter an ex parte order, without notice to the person, permitting such access. An ex parte order may permit a review of the record, but may not permit a copy to be made of it.

C. Any person who willfully violates this section is guilty of a Class 1 misdemeanor. (1977, c. 675; 1978, c. 713.)

Cross references. — As to punishment for Class 1 misdemeanors, see § 18.2-11.

The 1978 amendment substituted "or for" for "of" preceding "a pending criminal" near the middle of the first sentence of subsection B.

Law Review. — For survey of Virginia criminal procedure for the year 1976-77, see 63 Va. L. Rev. 1408 (1977).

§ 19.2-392.4. Prohibited practices by employers, educational institutions, agencies, etc., of State and local governments. — A. An employer or educational institution shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest or criminal charge against him that has been expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning arrests or charges that have been expunged.

B. Agencies, officials, and employees of the State and local governments shall not, in any application, interview, or otherwise, require an applicant for a license, permit, registration, or governmental service to disclose information concerning any arrest or criminal charge against him that has been expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning charges that have been expunged. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any arrest or criminal charge against him that has been expunged.

C. A person who willfully violates this section is guilty of a Class 1 misdemeanor for each violation. (1977, c. 675.)

Cross references. — As to punishment for Class 1 misdemeanors, see § 18.2-11.

Law Review. — For survey of Virginia criminal procedure for the year 1976-77, see 63 Va. L. Rev. 1408 (1977).

MICROFILMED FROM BEST AVAILABLE COPY

COMMONWEALTH OF VIRGINIA
CRIMINAL JUSTICE SERVICES COMMISSION

Rules and Regulations Relating to CRIMINAL HISTORY RECORD INFORMATION

Pursuant to the provisions of §§9-109 and 9-111.5 through 9-111.11, Code of Virginia (1950), as amended, the Criminal Justice Services Commission hereby promulgates the following rules and regulations:

1.0 DEFINITIONS:

A. "Commission" means the Criminal Justice Services Commission.

B. "Criminal justice agency" means a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities.

C. "The Central Criminal Records Exchange" means that repository in this Commonwealth which receives, identifies and maintains individual criminal history records.

D. "Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (Section 16.1-226 et. seq.), of Title 16.1, Code of Virginia (1950), as amended, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

E. "Correctional status information" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

F. "Conviction data" means information in the custody of any criminal justice agency relating to a judgement of conviction, and the consequences arising therefrom, in any court.

G. "Criminal justice information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

H. "Dissemination" means any transfer of information whether orally, in writing, or by electronic means. The term does not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and right to the information.

I. "Expunge" means removal by a court order from public inspection or access.

J. "Purge" means removal by a Commission order from public inspection or access.

K. "Seal" means to physically secure to prevent inspection, except where specified by court order.

2.0 APPLICABILITY:

These rules and regulations are applicable to original or copies, manual or automated criminal history records information which are used, collected, stored or disseminated by a criminal justice agency of the Commonwealth; its political sub-divisions; the United States or another State or its political sub-divisions which exchange such information with any agency of the Commonwealth or political sub-divisions but only to the extent of that exchange. Further, these rules apply to non-criminal justice agencies or individuals who are eligible under the provisions of law to receive such limited criminal history record information.

The provisions of these rules and regulations do not apply to the original or copied records of entry, such as police blotters maintained by a criminal justice agency on a chronological basis and permitted to be made public, if such records are not indexed or accessible by name; court records of public criminal proceedings, including opinions and published compilations thereof; records of traffic offenses disseminated to or maintained by the Division of Motor Vehicles for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses; statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable; announcements of executive clemency; posters, announcements, or lists for identifying or apprehending fugitives or wanted persons; criminal justice intelligence information; or criminal justice investigative information.

Nothing in these rules and regulations shall be construed as prohibiting a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is related to the offense for which the individual is currently within the criminal justice system.

MICROFILMED FROM BEST AVAILABLE COPY

3.0 COLLECTION AND STORAGE:

It shall be incumbent upon each criminal justice agency maintaining a criminal justice information system to insure the timeliness and accuracy of information in the system, collected after November one, nineteen hundred seventy six, and dispositions are reported promptly to the Central Criminal Records Exchange when appropriate, or to the arresting agency for offenses not required to be reported to the Central Criminal Records Exchange, but in no case later than 90 days of the disposition. In the event inaccuracies are discovered in the information collected, the agency shall notify all criminal justice agencies known to have received the information and corrections shall be made in the information.

There shall be use or dissemination of criminal offender record information by criminal justice agency personnel only after it has been determined to be the most accurate and complete information available to the criminal justice agency.

4.0 DISSEMINATION:

All criminal history record information shall be disseminated directly or through an intermediary only in accordance with the provisions of §§9-111.3 and 19.2-389, Code of Virginia (1950), as amended.

Criminal justice agencies disseminating criminal history record information shall maintain a record of such dissemination as to the receiving criminal justice agency or non-criminal justice agency or individual. The record shall consist of the date of dissemination, identifying name or number of subject record and agency or individual to whom the record was disseminated. Secondary or any subsequent dissemination by a criminal justice agency shall be guided by the same rules and regulations as outlined herein for a primary dissemination. A non-criminal justice agency or individual shall not disseminate any criminal history record information.

If a criminal justice agency determines that an agency or individual to which criminal history record information has been disseminated has further disseminated that information in violation of law, a report of that alleged violation shall be made promptly to the Commission. Similarly, if an individual having gained access to his criminal history record information for the purpose of ascertaining the completeness and accuracy of such information uses that information for any other purpose, he shall be subject to the penalty provisions (Class 2 Misdemeanor) of §9-111.13, Code of Virginia (1950), as amended. A report of such misuse of the information will promptly be made to the Commission.

A record of dissemination shall be preserved for a period of not less than three years from date of dissemination.

Prior to any dissemination of a criminal history record by a criminal justice agency, a query of the Central Criminal Records Exchange shall be made to insure the most up-to-date disposition data is used. Exceptions to this query are limited to those instances set forth in §19.2-389 (D), Code of Virginia (1950), as amended.

"Conviction data" record information shall be disseminated to a non-criminal justice agency or individual in compliance with the existing laws and its use shall be limited to the purpose of the original dissemination and shall not be disseminated further.

No agency or individual shall confirm or deny the existence or non-existence of criminal history record information to any person or agency that would not be eligible to receive the information itself. No dissemination of a criminal history record is to be made to a non-criminal justice agency or individual if an interval of one year has elapsed from the date of arrest and no disposition of the charge has been recorded and no active prosecution of charge is pending.

Interstate dissemination of criminal history record information shall be governed by existing state and federal law.

5.0 ACCESS AND REVIEW:

Any individual or his attorney, upon proper identification, shall have the right to inspect criminal history record information being maintained on that individual by the Central Criminal Records Exchange or any criminal justice agency.

Prior to any such inspection the agency may request a verification of the individual's identity through the furnishing by the individual of a set of inked fingerprints. Should an agency receiving such a request not have the capabilities to handle the classification of the fingerprints, same may be submitted by mail to the Central Criminal Records Exchange, who in turn will make the appropriate search and return to the requesting agency. At a minimum, verification of identity may be a Virginia operators' license, non-operators' identification card, photo identification of federal or state agency.

A fee not to exceed $5.00 may be charged by the requested agency to cover administrative costs.

Any individual or his attorney may inspect his criminal history record information arising from arrests for felonies and class 1 and 2 misdemeanors maintained about him in the Central Criminal Records Exchange by applying at any law enforcement agency with terminal capabilities on the Virginia Criminal Information Network or to the Central Criminal Records Exchange, Virginia State Police, directly, during normal working hours.

The agency to whom the request is directed shall provide reasonable assistance to the individual or his attorney to help understand the record.

6.0 CHALLENGE:

Individuals who desire to challenge their own criminal history record information must execute the appropriate form as required and forward to the Central Criminal Records Exchange or the criminal justice agency maintaining the record. A duplicate copy may be maintained by the individual initiating the challenge or review. A copy of the challenged record may be furnished to the requesting individual. This copy shall be prominently marked or stamped "NOT TO BE DISSEMINATED FURTHER EXCEPT AS PROVIDED BY LAW".

A fee not to exceed $1.00 per page may be charged by the criminal justice agency.

MICROFILMED FROM BEST AVAILABLE COPY

7.0 CHALLENGE OF CRIMINAL HISTORY RECORD MAINTAINED BY THE CENTRAL CRIMINAL RECORDS EXCHANGE:

If the challenge is made of a record maintained by the Central Criminal Records Exchange, the manual and/or automated record shall be flagged with the message "CHALLENGED RECORD". All records disseminated shall contain this message while under challenge.

The Central Criminal Records Exchange shall compare the original input form and the information contained in the repository files and reviewed by the individual. If no error is located, the Central Criminal Records Exchange shall forward a copy of the original challenge form, a copy of the Central Criminal Records Exchange form and any other relevant information to the agency or agencies which the Central Criminal Records Exchange records indicate as originating the information under challenge and request them to examine all relevant files to determine validity of the challenge.

The agency responsible for originating the challenged record shall conduct an examination of the agency's source data, the contents of the challenge and information supplied by the Central Criminal Records Exchange for any discrepancies or errors and shall advise the Central Criminal Records Exchange as to the results of the examination. The Central Criminal Records Exchange shall then notify the agency in which the record was originally reviewed of the Central Criminal Records Exchange's action. The agency in which the review and challenge occurred shall notify the individual or his attorney of the Central Criminal Records Exchange's action.

8.0 CHALLENGE OF CRIMINAL HISTORY RECORD MAINTAINED BY A CRIMINAL JUSTICE AGENCY OTHER THAN THE CENTRAL CRIMINAL RECORDS EXCHANGE:

If a challenge is made of a record maintained by an agency, the manual and/or automated record shall be flagged with the message "CHALLENGED RECORD". All disseminated records shall contain this message while under challenge.

If the challenged record pertains to the arrest information, the agency shall examine all relevant files to determine the validity of the challenge. If no error(s) are found, the agency shall then notify the agency where the review and challenge occurred, which agency shall notify the individual or his attorney of the action taken.

If the challenged record pertains to the disposition information, the agency shall compare contents of challenge with the information supplied by the Clerk of the Court. If no error(s) are found, forward the challenge to the Clerk of the Court originating the disposition for examination of the court records pursuant to the challenge. The arresting agency shall then notify the individual or his attorney of the action. The Clerk of the Court shall

cause the court records to be compared with the contents of the challenge to determine if there are discrepancies in the disposition segment of the record maintained by the arresting agency or record reviewed by the individual. The Clerk of the Court shall notify all agencies, party to the challenge, of the results and any corrective action. The agency in which the challenge occurred shall notify the individual or his attorney of action taken.

9.0 ADMINISTRATIVE REVIEW:

After the afore-mentioned review and challenge has been made in either the Central Criminal Records Exchange or the arresting agency, the individual or his attorney may in writing request that the agency head review the challenge if he is not satisfied with the results of the review and challenge. The agency head or his designated official shall review the challenge and notify the individual or his attorney of the decision within 30 days of the receipt of the written request.

10.0 ADMINISTRATIVE APPEAL:

After the administrative review, the individual or his attorney may in writing, within 30 days of notification of the decision of the administrative review, request that the Executive Director of the Commission review the chal. ge and conduct an informal hearing before the Executive Director or a designated hearing officer. The decision of the hearing officer shall be communicated to the individual or his attorney.

11.0 CORRECTION:

If an error is discovered, all known copies of the record(s) shall be corrected by notifying appropriate criminal justice agencies, non-criminal justice agencies or individuals in writing of the corrections to be made. This communication shall include a request for the receiving criminal justice agencies to notify any and all additional agencies or individuals known to maintain such record(s) and to make the appropriate corrective action. Upon request, an individual or his attorney shall be given the name of all non-criminal justice agencies to whom data has been furnished.

12.0 AUDIT:

The Criminal Justice Services Commission shall conduct annual audits of a random representative sampling of state and local criminal justice agencies so as to insure and verify adherence to rules and regulations and insure completeness and accuracy of the criminal history records.

The audit reviews may include, but not be limited to, examination of record accuracy, completeness, effectiveness of the systematic audit procedures, evidence of dissemination limitations, security provisions and the individual's right of access and challenge.

MICROFILMED FROM BEST AVAILABLE COPY

13.0 EXPUNGING AND PURGING AND SEALING:

13.1 COURT ORDER:

The Executive Director, upon receipt of a court order for the expungement of a criminal history record, pursuant to §19.2-392.2, Code of Virginia (1950), as amended, shall by letter with an enclosed copy of the order, direct the Central Criminal Records Exchange and those agencies and individuals known to maintain or to have obtained such a record, to remove the manual record from its repository and place it in a sealed, separate file identified by the Central Criminal Records Exchange number or other identifying number and mark "EXPUNGED RECORD TO BE UNSEALED ONLY BY COURT ORDER".

Should the record be maintained in an automated system, the Central Criminal Records Exchange or the agency known to possess such a record shall cancel the automated record in whatever manner necessary to preclude on-line or off-line access to the record. The automated record should be electronically erased if necessary to fully effect the cancellation. The procedures as outlined herein for manual records shall be followed.

Should an expungement court order be directed to a criminal justice agency other than the Commission, the directed criminal justice agency shall comply as outlined herein and without delay advise the Executive Director in writing of such order together with a copy of the order. The Executive Director shall upon receipt of such notification follow the procedure previously mentioned.

13.2 ADMINISTRATIVE:

The Executive Director, upon the receipt of the C ission's order to purge a criminal history record, pursuant to §9-111.9, C of Virginia (1950), as amended, shall by letter, direct the Central Criminal Records Exchange and/or all other jurisdictions known to maintain such a record, to remove the manual record from its repositiory and place it in a sealed, separate file identified by the Central Criminal Records Exchange number or other identifying number and mark "PURGED RECORD TO BE UNSEALED ONLY BY COURT ORDER".

Should the record be maintained in an automated system, the Central Criminal Records Exchange or the agency possessing such a record shall cancel the record, and follow the procedures outlined herein for manual records.

13.3 SEALED RECORDS:

No sealed record shall be subject to inspection by anyone, except pursuant to an appropriate court order.

13.4 PROCEDURE:

A. Expungement of records shall be made pursuant to §19.2-392.2, Code of Virginia (1950), as amended, or as otherwise provided by law.

B. Requests for the Commission's consideration to purge a criminal history record pursuant to the Commission's authority under §9-111.9, Code of Virginia (1950), as amended, shall be submitted to the Executive Director in writing setting forth all pertinent information regarding the record which the individual desires the Commission to consider, including name under which arrest is listed, date and jurisdiction of arrest, the date and court where adjudicative action was taken, and all facts and arguments which the petitioner desires the Commission to consider. Upon such a request, the Executive Director will in writing request the Clerk of the appropriate Court to cause a search to be made and verify the existence of such a record.

On or before the date the petition is submitted to the Executive Director, a copy of the petition shall be forwarded by the petitioner to the Commonwealth's Attorney of the jurisdiction wherein the arrest, adjudication or conviction occurred, by certified mail, return receipt requested. The Commonwealth's Attorney and the petitioner shall have the opportunity to submit in timely fashion such matters or evidence as may be relevant to the Commission for its consideration.

The Executive Director or a designated Commission staff member will present the facts as furnished by the petitioner to the Commission for consideration in accordance with §9-111.9, Code of Virginia (1950), as amended.

The decision of the Commission shall be made known to the petitioner and the Commonwealth's Attorney in writing and if a record purge is ordered the procedure for sealing that record set forth herein shall be followed.

The petitioner need not be present for the proceedings on consideration of his petition before the Commission for purging of a criminal history record. However, he may request the Executive Director to schedule his appearance in person or by his attorney before the Commission or a body of Commission members designated by the Chairman of the Commission, at which appearance he or his attorney may present factual data, arguments or proof in connection with his petition.

14.0 EFFECTIVE DATE:

These rules and regulations shall be effective on and after September 15, 1977, and until amended or rescinded.

15.0 ADOPTED:

July 27, 1977

MICROFILMED FROM BEST AVAILABLE COPY

PART II
CRIMINAL HISTORY RECORD INFORMATION SECURITY

14.0 CRIMINAL HISTORY RECORD SECURITY:

14.1 APPLICABILITY:

These rules and regulations are applicable to all criminal justice informaiton systems operated within the Commonwealth of Virginia. These rules and regulations on seucrity are not applicable to court records or other records expressly excluded by Section 9-111.5, Paragraph B, Code of Virginia (1950), as amended.

These rules and rgulations establish aminimum set of seucrity standards which shall apply to any manual or automated record keeping system which collects, stores, processes, or disseminates criminal history reocrd information.

Where individuals or non-criminal justice agencies are authorized to have direct access to criminal history record information pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice, such service support agreement will embody the restrictions on dissemination and the security requirements contained in these rules and regulations and the Code of Virginia.

14.2 RESPONSIBILITIES

A. In addition to those responsibilities mandated by State and Federal laws, the Department of State Police shall have the responsibility for the implementation of these rules and regulations in regard to the operation of the Central Criminal Records Exchange.

B. The implementation of these rules and regulations, except as set forth in sub-paragraph A, shall be the responsibility of the criminal justice agency as designated and authorized by the county or municipality in cases of political sub-divisions. Nothing in these rules and regulations shall be deemed to affect in any way the exercise of responsiblitity conferred on counties and municipalities of the State under Title 15.1, Code of Virginia (1950), as amended. The determination of the suitability of the actual procedures instituted by the criminal justice agency will be the subject of study in any audit by the Criminal Justice Services Commission mandated by Section 9-111.5, Code of Virginia (1950), as amended.

14.3 PHYSICAL ACCESS:

Access to any area in which criminal history reocrd information is collected, stored, processed, or disseminated shall be limited to authorized persons. Control of such access shall be ensured through the use of locks, guards and/or other appropriate means. Authorized personnel shall be clearly identified.

Procedures shall be established to detect an unauthorized attempt or access. Furthermore, a procedure shall be established to be followed in those cases in which an attempt or unauthorized access is detected. Such procedures shall become part of the orientation of any employee working in criminal history record information area(s) and shall be reviewed periodically to ensure their effectiveness.

Each criminal justice agency shall provide that direct access to criminal history record information shall be available only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel esential to the proper operation of the criminal history record information system.

Each criminal justice agency shall institute procedures, where computer processing is not utilized, to ensure that an individual or agency authorized to have direct access is responsible for (i) the physical security of criminal history record information under its control or in its custody and (ii) the protection of such information from unauthorized access, disclosure, or dissemination.

Procedures shall be instituted to protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or man-made disasters.

All system specifications and documentation shall be carefully controlled to prevent unauthorized access and dissemination.

14.4 PERSONNEL:

In accordance with applicable laws, ordinances, and regulations, the criminal justice agency shall:

A. Screen and have the right to reject for employment, based on good cause, all personnel to be authorized to have direct access to criminal history record information.

B. Have the right to initiate or cause to be initiated administrative action leading to the transfer or removal of personnel authorized to have direct access to such information where such personnel violate the provisions of these regulations or other security requirements established for the collection, storage, or dissemination of criminal history record information.

C. Ensure that each employee working with or having access to criminal history record informaiton shall be made familiar with the substance and intent of these regulations. All designated employees shall be briefed on their roles and responsibilities in protecting the informaiton resources in the agency. Special procedures connected with security shall be documented and disseminated to all those with a need to know. These procedures shall be reviewed periodically to ensure their relevance and continuing effectiveness.

14.5 TELECOMMUNICATIONS:

In those systems where terminal access of criminal history record information is permitted, all terminal devices must be secure. Any terminal device capable of receiving or transmitting criminal history record information shall be attended during all periods of its operation. In all cases in which the terminal is unattended, the device, through some security means, shall be made inoperable.

Telecommunications facilities used in connection with the terminal shall also be secured. The terminal device shall be identified on a hardware basis to the host computer. In addition, appropriate identification of the terminal operator may be required. Equipment associated with the terminal device shall be reasonably protected from possible tampering or tapping. In all cases in which a computer system provides terminal access to criminal history record inforamtion, the use of dial-up lines shall be prohibited to access criminal history record information.

14.6 COMPUTER OPERATIONS:

Where computerized data processing is employed, effective and technologically advanced software and hardware designs shall be instituted to prevent unauthorized access to such information.

Computer operations, whether dedicated or shared, which support criminal justice informaiton systems shall operate in accordance with procedures developed or approved by the participating criminal justice agencies.

Criminal history record information shall be stored by the computer in such manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by non-criminal justice terminals.

Operation programs shall be used that will prohibit inquiry, record updates, or destruction of records, from any terminal other than criminal justice system terminals which are so designated.

The destruction of records shall be limited to designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information.

Operational programs shall be used to detect and store for the output of designated criminal justice agency employees all unauthorized attempts to penetrate any criminal history record information system, program or file.

Programs designed for the prupose of prohibiting unauthorized inquiries, unauthorized record updates, unauthorized destruction of records, or for the detection and logging of unauthorized attempts to penetrate any criminal

history record information system shall be known only to the criminal justice agency employees responsible for criminal history record information system control or individuals and agencies pursuant to a specified agreement with the criminal justice agency to provide such programs. The program(s) shall be kept continuously under maximum security conditions.

The criminal justice agency shall have the right to audit, monitor, and inspect procedures established pursuant to these rules and regulations.

15.0 EFFECTIVE DATE:

These rules and regulations shall be effective on and after June 1, 1978, and until amended or rescinded.

16.0 ADOPTED:

July 27, 1977

AMENDED:

April 20, 1978

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	314-9	X	
2. Privacy and Security			
3. Dissemination Regulations	314-4 Reg. 365-50-290 to 365-50-550 Reg. 162-12-140	X X X	
4. Inspection	314-8 Reg. 365-50-070	X X	
5. Challenge	314-8 Reg. 365-50-210	X X	
6. Judicial Review			
7. Purge: Non-Conviction	314-6	X	
8. Purge: Conviction			
9. Seal: Non-Conviction			

ITEM	CITATION	1978 Compendium	1979 Supplement
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record			
13. Research Access	314-4(5) 314-5(6) Reg. 365-50-310	X X X	
14. Accurate & Complete			
15. Dedicate			
16. Civil Remedy	314-11	X	
17. Criminal Penalty	314-12	X	
18. Public Records			

ITEM	CITATION	1978 Compendium	1979 Supplement
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security			
23. Transaction Logs	Reg. 365-50-250	X	
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ	314-13	X	

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

Wash-CJ-01

BLANK PAGE

WAC 162-12-140. PRE-EMPLOYMENT INQUIRIES. (1) The rules in the following chart of fair and unfair inquiries apply to job application forms, pre-employment interviews, or any other type of interrogation of persons seeking to be employed. The rules do not apply after a person is employed. See WAC 162-12-180.

(2) Employers and employment agencies shall observe these pre-employment rules except where one or more of the following conditions exist:

a. A "bona fide occupational qualification" as explained in Chapter 162-16 WAC.

b. An approved corrective employment program as provided for in Chapter 162-18 WAC.

c. A contrary requirement of federal law, as explained in WAC 162-12-150.

d. An approved data collection plan under WAC 162-12-160 and 170.

If one or more of the above conditions apply, the employer or employment agency may use appropriate inquiries that would otherwise be unfair. Inquiries made under these exceptions must always be accompanied by an explanation of their purpose. See WAC 162-12-135, 162-12-170, 162-16-040, and 162-18-090.

(3) The examples in the following chart of fair and unfair pre-employment inquiries are intended to define what is an unfair practice under RCW 49.60.180(4) and RCW 49.60.200 and to have the force the law where they apply. These examples are not exhaustive, however. The statutes prohibit all pre-employment inquiries which unnecessarily reveal race, sex, or membership in other protected classes, whether or not the particular inquiry is covered in this regulation.

SUBJECT	FAIR PRE-EMPLOYMENT INQUIRIES	UNFAIR PRE-EMPLOYMENT INQUIRIES
d. Convictions (See also Arrests)	Inquiries concerning specified convictions which relate reasonably to fitness to perform the particular job being applied for, *Provided* that such inquiries be limited to convictions for which the date of conviction or prison release is within 7 years of the date of the job application.	Inquiries which would divulge convictions which (a) do not relate reasonably to fitness to perform the particular job or (b) do not relate solely to convictions for which the date of conviction or prison release is within 7 years of the date of the job application.
b. Arrests (See also Convictions)	None.	All inquiries relating to arrests.

MICROFILMED FROM BEST AVAILABLE COPY

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority			
2. Privacy and Security			
3. Dissemination Regulations			
4. Inspection			
5. Challenge			
6. Judicial Review			
7. Purge: Non-Conviction	15-2-24(h)	X	
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete			
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty			
18. Public Records			
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security			
23. Transaction Logs			
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ	29B-1-4	X	

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

M O S A - L E A - A

BLANK PAGE

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	165.84(B)	X	
2. Privacy and Security			
3. Dissemination Regulations	165.83(j)	X	
4. Inspection			
5. Challenge			
6. Judicial Review			
7. Purge: Non-Conviction			
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete	165.83(2, f)	X	
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty			
18. Public Records			
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination			
22. Security			
23. Transaction Logs			
24. Train Employees			
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ			

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

BLANK PAGE

ITEM	CITATION	1978 Compendium	1979 Supplement
1. State Authority	9-136.19,22.31	X	
2. Privacy and Security			
3. Dissemination Regulations			
4. Inspection	9-692.3	X	
5. Challenge	9-692.3	X	
6. Judicial Review	9-692.3	X	
7. Purge: Non-Conviction			
8. Purge: Conviction			
9. Seal: Non-Conviction			
10. Seal: Conviction			
11. Remove Disqualification			
12. Deny CJ Record			
13. Research Access			
14. Accurate & Complete			
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty			
18. Public Records			
19. Separate Files			
20. Intelligence Collection			
21. Intelligence Dissemination	9-136.27	X	
22. Security			
23. Transaction Logs			
24. Train Employees	9-136.24	X	
25. List Systems			
26. F.O.I. Including CJ			
27. F.O.I. Excluding CJ	9-692.3	X	

INDIVIDUAL STATE STATUTES/REGULATIONS
BY CLASSIFICATION CATEGORY

-SAS-

S-43-

*U.S. GOVERNMENT PRINTING OFFICE: 1981--361-233/6312

PRIVACY AND SECURITY DOCUMENTS

Other Publications of Privacy and Security Staff

Privacy and Security of Criminal History Information: A Guide to Dissemination
(NCJ 40000)

Privacy and Security of Criminal History Information: A Guide to Record and Review
(NCJ 48125)

Privacy and Security of Criminal History Information: A Guide to Administrative Security
(NCJ 49110)

Privacy and Security of Criminal History Information: A Guide to Audit
(NCJ 59647)

Privacy and Security of Criminal History Information: A Guide to Research and Statistical Use
(NCJ 69790)

Privacy and Security of Criminal History Information: A Compendium of State Statutes
(NCJ 48981)

Privacy and Security of Criminal History Information: A Compendium of State Statutes
1979 Supplement (NCJ 59645)

Privacy and Security of Criminal History Information: An Analysis of Privacy Issues
(NCJ 69791)

Privacy and Security of Criminal History Information: A Summary of Privacy Legislation
1979 (NCJ 59646)

Privacy and Security of Criminal History Information: Users Manual
(NCJ 59644)

Privacy and Security of Criminal History Information: Privacy and the Media
(NCJ 59643)

Privacy and Security of Criminal History Information: A Summary of State Plans

Privacy and Security Planning Instructions
(NCJ 34411)

Confidentiality of Research and Statistical Data
(NCJ 47049)

Confidentiality of Research and Statistical Data: A Compendium of State Legislation
(NCJ 44787)

Computer Crime: Criminal Justice
(NCJ 61551)

Computer Crime: Criminal Justice Resource Manual
(NCJ 61550)

U.S. Department of Justice
Bureau of Justice Statistics

Official Business
Penalty for Private Use $300

Postage and Fees Paid
U.S. Department of Justice
Jus 436

SPECIAL FOURTH-CLASS
RATE BOOK

Washington, D.C. 20531

MICROFILMED FROM BEST
AVAILABLE COPY

END

3-19-82